

THE HAND OF CICERO

SHANE BUTLER

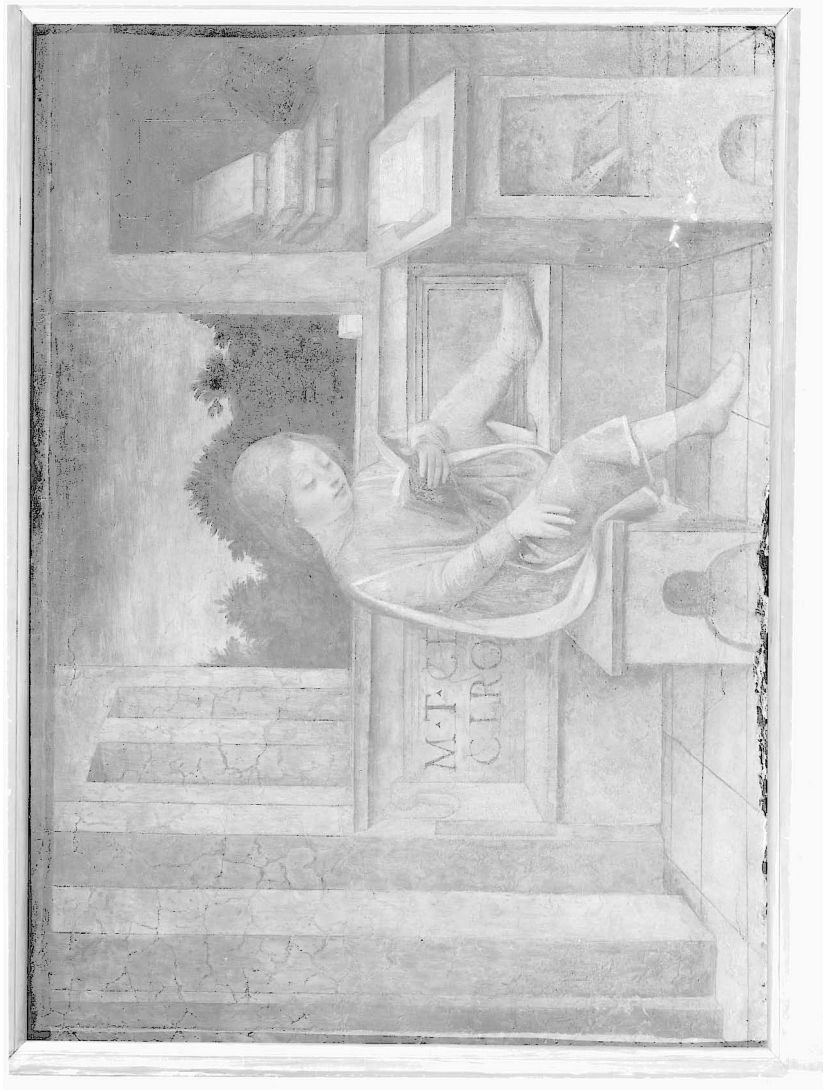


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The Young Cicero Reading, Vincenzo Foppa (1427/30–1515/16). Courtesy of The Wallace Collection, London.

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Shane Butler



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ABBREVIATIONS

In the notes, references to ancient authors and their works are by the abbreviations used in the *Oxford Classical Dictionary* (3rd edn), as are references to principal journals of classical scholarship. For Cicero's Verrines, I have followed my own practice of using *Verr. I* for the first *actio* and *Verr. II*, followed by book number, for the speeches of the second *actio*. For the reader's convenience, Cicero's letters are cited both by the sequential numbers with which they appear in various editions of D. R. Shackleton Bailey and by the standard book and letter numbers.

Other frequently cited works appear as follows:

Marinone	Nino Marinone, <i>Cronologia Ciceroniana</i> (Rome, 1997)
LTUR	Eva Margareta Steinby, ed., <i>Lexicon Topographicum Urbis Romae</i> , 6 vols (Rome, 1993–2000)
OCD	Simon Hornblower and Anthony Spawforth, eds., <i>Oxford Classical Dictionary</i> , 3rd edn (Oxford and New York, 1996)
OLD	<i>Oxford Latin Dictionary</i> (Oxford and New York, 1983)
RE	A. Pauly, G. Wissowa, W. Kroll, eds., <i>Real-Encyclopädie der klassischen Altertumswissenschaft</i> (Stuttgart, 1893–)
Shackleton Bailey	D. R. Shackleton Bailey, ed., <i>Cicero's Letters to Atticus</i> , vols 1–6 (Cambridge, 1965–70)
Stangl	Thomas Stangl, <i>Ciceronis Oratorum Scholiastae</i> , vol. 2 (Vienna, 1912)
TLL	<i>Thesaurus Linguae Latinae</i> (Leipzig, 1900–)

INTRODUCTION

The hand (or hands) of Cicero

On December 7, 43 BCE, a newly severed head was added to those already oozing gore on the Roman Rostra. To know why history has remembered this latest victim more than any of the others, it is enough to read the name propped up behind and realize that this was the head of Cicero.¹ Even Cicero's detractors usually admit that no other corpse could so persuasively have embodied the dismemberment of the Roman Republic and the silencing of dissent to the new world order. More than famous, Cicero was an icon; to his admirers, he was "the very name of eloquence," "the beauty of an age." But what just now attracts our attention to this ghastly scene and to this one victim in particular is not Cicero's reputation or the ironic fact that he so often had addressed the crowd from this very spot. Alone among the carnage, Cicero's remains were distinguished by a formal divergence from the rest. For Cicero's head was not the only part of his body on display.

Alongside Cicero's head, terrified onlookers in the Forum that day also saw – what exactly? The ancient sources are divided, some reporting two hands, others only one.² Plutarch, who describes the mutilation of Cicero's corpse both in his *Life of Cicero* and in his *Life of Antony*, gives a different version in each instance:

τὴν δὲ κεφαλὴν ἀπέκοψαν αὐτοῦ καὶ τὰς χεῖρας, Ἀντωνίου κελεύσαντος, αἷς τοὺς Φιλιππικοὺς ἔγραψεν.

They cut off his head and, on Antony's orders, the hands with which he had written the Philippics.

(*Cic.* 48.6)

Κικέρωνος δὲ σφαγέντος ἐκέλευσεν Ἀντώνιος τὴν τε κεφαλὴν ἀποκοπῆναι καὶ τὴν χεῖρα τὴν δεξιάν, ἧς τοὺς κατ' αὐτοῦ λόγους ἔγραψε.

When Cicero was butchered, Antony ordered that his head be cut off,

along with his right hand, the hand with which he had written the speeches against him.

(*Ant.* 20.3)

The author of a modern study of the various sources on Cicero's death expresses a preference for the accounts that report a single hand but cautions that certainty is impossible.³

The question that frames this book, however, is a slightly different one: one hand or two, what motivated Cicero's unparalleled additional dismemberment? Plutarch is unique among ancient writers in explicitly stating Mark Antony's reasons, though this same explanation is implicit in other accounts.⁴ At first glance, the motive he gives does not surprise us, for we all know that Antony insisted on Cicero's death as revenge for the orator's savage attacks in the speeches that came to be known as the Philippics. But on closer inspection, there is something odd here, and it might be expressed thus: in the "oral culture" that (we are told) characterized Ancient Rome, how did it come to pass that a man could be hated for the speeches which he had "written"?⁵ In other words, if Antony wanted a sign that Cicero had been silenced, why was he not content with the orator's tongue, safely quiet inside his lifeless head?

On second thought, we might be tempted to doubt Plutarch's word and suppose that what Antony really wanted was the hand (or hands) responsible for Cicero's pointed oratorical gestures – or perhaps the unfaithful organ of Cicero's political handshakes. But as we will see in the following pages, Antony and others had good reason to fear the written word, especially in the hands of Cicero. Not only is Plutarch's account of the motive likely to be right, but the dismemberment itself, seen in this light, turns out to be a strangely neglected key to the lived world of Ciceronian oratory.

Our investigation will take us back to Cicero's debut in the law courts and will follow him through several of the most famous events of his career. Emphasis throughout will be on the direct relationship between oratorical practice and written texts of many kinds.⁶ In the course of this book, we will encounter at least the following: the public records of Sicilian cities, scripts for public testimony, depositions, accounts (public, private, and corporate, including the accounts of Rome's treasury), letters both official and private, commemorative inscriptions on stone, bronze, and ivory, court transcripts, posted edicts and formularies, inscribed laws, judicial ballots, lists of jurors, a written accusation, signs, wills, treaties, pamphlets, contracts, notebooks, promissory notes, receipts, written orders, auction records, the inscribed lots of a sortition, graffiti and pasquinades, the census, a diary, a facsimile, a name-tag, senatorial transcripts, the Sibylline books, the minutes of Caesar's tyranny, gladiatorial posters and programs, rough drafts, a book of ready-to-use prefaces, literary works of all sorts, two proscription lists, published speeches by Cicero and others, and, finally, frauds and forgeries

of nearly everything just listed. At the center of this rich and varied landscape of texts will be Cicero himself, tirelessly trying to make sense of it all.

This study joins a growing body of work on social and cultural aspects of the use of written texts in the ancient world.⁷ Probably closest in spirit to the present work are two books on Greek matters by Rosalind Thomas: *Oral Tradition and Written Record in Classical Athens* (1989) and *Literacy and Orality in Ancient Greece* (1992). The latter includes, in an epilogue, a brief prospectus for similar work on the Roman world, for which Thomas suggests, "Perhaps Rome should be considered . . . as a society in which the spoken word, though important, was increasingly dominated and influenced by written texts."⁸ I hope that the present book offers a partial answer to Thomas's call for work on Rome, though I mostly have avoided confronting the question implicit in her word "increasingly." What is needed first, I think, is a series of careful reconstructions of synchronic relationships between written and oral practices, before a panoramic view can attempt to discern change over time.

Each of the following chapters offers a vignette of Cicero at work in environments amply characterized by the written word, seen mostly through the lens of his surviving oratorical works. Two seldom-read early speeches, the *Pro Quintio* and the *Pro Sexto Roscio Amerino*, set against the backdrop of the Sullan proscription, provide the primary material for Chapter 1. This is followed by a series of discussions of the massive collection of speeches *In C. Verrem* in Chapters 2 to 5. The Verrines comprise roughly a quarter of surviving Ciceronian oratory, and the case they present is of staggering documentary complexity. Chapter 2 offers some preliminary background; Chapter 3 provides what I hope is an exhaustive catalogue of all written texts mentioned in the speeches (a list that should be a useful tool for those working on documentary culture generally); Chapter 4 explores the presentation of evidence at the trial; and Chapter 5 considers the publication of the speeches, most of which were never delivered, since Verres fled into voluntary exile after the trial's evidence phase. In Chapter 6, we turn to Cicero's well-known speeches against the Catilinarian conspirators, though specifically to the least read (the third) of the group; here we will review, from pre-dawn to dusk, the events of a day in which written texts brought Rome to a standstill. Chapter 7 takes a close look at the five months or so that passed between the assassination of Julius Caesar and the publication of Cicero's Second Philippic, with some final thoughts on the causes of Antony's murderous rage.

The sum of these parts is a Cicero who is at once both more and less than the orator usually remembered. To Cicero, then, let us now turn.

THE YOUNG CICERO, READING

The sole surviving fragment of frescoes executed in the 1460s by Vincenzo Foppa for the Palazzo Mediceo of Milan shows a rosy-cheeked fair-haired *fanciullo* seated on a bench, absorbed in the book he balances with a delicate hand against his chest, which is draped in a pink fur-trimmed smock that matches his slippers.¹ To his right another book lies open on a table, while others wait to be fetched from two cubby-holes, one of which holds the lectern the boy has abandoned in favor of the more intimate relationship to his book allowed by his pose. To his back, on the bench, could be read (until it was slightly garbled by a bungling restorer) an inscription: M. T. CICERO. The name was taken to refer to the author of the book the boy is reading until 1950, when Ellis Waterhouse made what he freely admitted was “a suggestion so obvious that it seems never to have been made,” viz., that it is not the book but the boy who is Cicero, and that Foppa has offered us a fancy of the bibliophilic beginnings of the consul-to-be.²

Waterhouse connects the scene to a statement in Plutarch about fame already acquired by the very young Cicero for his quickness in school and thus makes the bench a school bench.³ But the decor makes us think rather more of the *studioli* of Renaissance scholars, “among the elegant wooden shelves and benches where they spent so many hours leaning over heavy, odiferous books, writing in margins, and using the skills, and sometimes breaking the rules, they had learned from influential teachers.”⁴ In the painting, of course, both book and scholar have been shrunk, and the only hint as yet that the young Cicero might one day “break the rules” is, perhaps, his foot on the bench. But there seems little doubt that the painting represents a quite understandable desire to see the young Cicero reading in the same sort of environment in which the humanists themselves read Cicero. This probably is what led nineteenth-century commentators on the painting to overlook the “obvious” and identify the boy as Pico della Mirandola or as a young Sforza prince.

Classicists might fuss about details of clothing and architecture in the scene and would hastily paint over the anachronistic *codices* with book-rolls and wax

tablets. But the most important problem with Foppa's picture is not so much the room or the books as it is the expression on the boy's face. Downstairs in the cantina, we must imagine Cicero's mother sealing "even the empty wine flasks" to guard against pilfering – the only detail of the domestic life of the Tullii Cicerones that has been preserved for us.⁵ In such an efficient household, time and space for pleasure must have been taken on the sly. The sole exception may have been Cicero's father, who, Cicero himself tells us, suffered from bad health and devoted his time to literary pursuits.⁶ But there is no evidence that the son was encouraged to follow his father's example; rather, the family's investment in the education of Marcus and his brother Quintus was calculated to serve ambitious ends. Perhaps it was Cicero's mother, of senatorial family, who first pushed the boys toward politics. In any case, by the time he left Arpinum, Cicero had made his family's ambition for his future his own.

Yet we search in vain the face of Foppa's tranquil prince for signs of the fear of idleness that should already be drawing young Cicero's face into the restless adult expression preserved in a handful of ancient busts.⁷ The thoughts of the boy in the painting carry him into the literary *selva oscura* that waits beyond an open window, but the young Cicero must have had no time either for fairy tales or for aristocratic *otium*. The journey which he charted was a real one, for he must have known even from an early age that his books and notebooks were paving his way to the capital city, distant – once one joined the Via Latina – some seventy Roman miles.

The Renaissance picture of Cicero celebrates reading and writing as humanistic pursuits, while perhaps obscuring the textual experiences most relevant to Cicero and his age. In this chapter we will attempt a reconstruction of the young Cicero reading that will be quite different from that offered by Foppa. In the first place, we will focus on a period in Cicero's life – that of his debut as an orator – for which we know more about his reading habits. Second, we will break with the scholarly fantasy of Cicero, reader of books, to attempt a more complex picture of Cicero reading a wide variety of written texts. Indeed, in this chapter, as in the several that follow, our study of Cicero's relationship to the written word will have, for some, surprisingly little to do with books or literature.

In a moment, we will turn to the evidence provided by Cicero's earliest surviving speeches. But first, let us sketch a counterpoint to Foppa's idyll. Picture Cicero in his mid-twenties, already in Rome, and place him not in a secluded study but in the midst of the Roman crowd, where he is as yet just a face like countless others. On this particular day, the din of the crowd is of an uncustomary character, but Cicero no longer notices: he, like the others shoving their way forward to see, is busy reading. Before him is a text that could not be more different from the book held by the boy in Foppa's painting. This text is not a book, but a book will help us to imagine it.

The first proscription

François Hinard's *Les Proscriptions de la Rome républicaine* ends with two catalogues of the proscribed, one for the Sullan proscription of 82 BCE, another for that of the triumvirs in 43 BCE.⁸ The lists are culled from stray mentions in various later sources, and each list is arranged alphabetically, with what is known of each name (some are fragmentary) given after a sequential number. For some of the victims, a name is all that remains; where shreds of evidence for a life survive, Hinard had pieced together a brief biography; in a few exceptional cases, the victims were famous and we know a great deal about them. In the end, there are 75 entries for the first proscription and 160 for the second – a fraction of the actual number proscribed, but still an impressive reconstruction. In the case of the first proscription, most of the proscribed eventually were killed or committed suicide; for every victim whose name survives, perhaps six dead remain anonymous.

Hinard's twin prosopographical lists form a curiously moving monument to the dead. The litany of names goes on for 200 pages, while the discussion below each entry constantly reminds that to each of the names was once attached a life. It is sometimes said that the proscriptions were numerically mild compared to other atrocities of their day, but Hinard's book helps us to see why counting heads misses the point: the terror produced by the proscriptions was not a matter so much of quantity, or even of quality, though the rich and powerful figure prominently in the lists, but rather one of form. This began with the formal characteristics of the proscription list itself, of which we already catch a glimpse in Hinard's catalogue, especially in the names, printed in capitals that stand out bold and black against the white of the page.

In legal terms, the *proscriptio* proper was loosely fit by ancient writers into the category of the *edictum*, the decree of a high Roman magistrate – in this case, Sulla in the capacity of *dictator*.⁹ Formally, the list itself was in generic terms a *tabula* and more specifically an *album*, a whitened board bearing a painted inscription, usually set up in a public place. *Alba* were used to record not only *edicta* but also other texts, including, most famously, official annals of magistrates and prodigies; the proscription shared with all of these a schematic and repetitive format. After a preamble and the condemnation itself, including the price to be paid per head – 12,000 *denarii* in the case of the first proscription – came a list of names. On the first day of Sulla's proscription there were 80 names; on the second day were added 220; on the third as many again, for a total of 520.¹⁰ Anyone who wished was free to present one of the heads listed and claim the published prize.

Sulla himself seems to have invented this novel form of mass execution. A tradition recorded by Plutarch makes the idea the product of a discussion with the dictator in the senate. With Sulla's retribution against his enemies

already well under way, and “murders without number or limit filling the city,” a young Gaius Metellus beseeched the dictator for clarity:

“We do not petition you,” he said, “to spare from vengeance those whom you have decided to do away with, but to relieve from doubt those whom you have decided to save.” When Sulla answered that he had not yet decided whom to spare, Metellus responded, “Very well, then, show us clearly whom you propose to punish.”¹¹

The story makes the proscription a grim improvement over disordered slaughter, and whether or not the anecdote is true, it probably reflects the real way in which the list itself gave the massacre the appearance of law. For even if the proscription of persons originated with Sulla, proscription in its general sense had a long legal history in the form of the *proscriptio* or *publicatio bonorum*, the confiscation of an individual’s property, announced through the posting of a public notice.¹² Since the terms of Sulla’s proscription also included the confiscation of the property of the victims, he might be said to have built on an established legal precedent, expanding the goods included under proscription to include the head of the proscribed. Such a justification doubtless seemed as specious to contemporaries as it does to us, but it may also have seemed ironically appropriate: many of those proscribed were said to die not so much for their politics as for their wealth. Plutarch records the story of a certain Quintus Aurelius, unassuming but well-off, who, unexpectedly finding his own name on the list, exclaimed, “Ah! woe is me! my Alban estate is prosecuting me.”¹³

Few of the proscribed will have had time for similar ironic reflection. The reading public of the list, however, was larger than just those whose names appeared. There were, of course, the *percussores* who chose to carry out the sentence and collect the reward. (Among them was Catiline, the later conspirator.) But to the extent that it was an act of terror, the proscription bore a message addressed neither to its victims nor to its agents. Most Romans escaped death but not fear during the proscriptions; the more philosophical among these had both time and reason to contemplate carefully the list’s broader meaning. They are unlikely to have been reassured by the proscription’s apparent legality; rather, its legal form had precisely the opposite effect. The list’s beguiling familiarity, its formal order and ordinariness, stood in uncanny contrast to the violence it commanded. Was it really possible to kill a man simply by writing his name? Here was something else uncanny, for the Romans were used to the association of death with proper names in the guise of the epitaph – what made the proscription different was that it announced a death that had yet to occur. But perhaps the most striking feature of the proscription was the way in which it displaced and diffused responsibility for the slaughter. Who was the real murderer? Sulla? The state? The law? The informants? The *percussores*? Was even the sign-painter

in some way responsible? For a few days at least, it was the list itself that ruled Rome.

Several centuries later, Dio Cassius described the scene of the reading of the proscription list thus:

The tablets were set up like a register of senators or list of conscripted soldiers. Everyone who would pass by pushed forward eagerly with the crowd, as if the tablets bore some useful announcement. Many found relations – and some, indeed, found themselves – there written, whereby the fate which overtook them was made more terrible, in as much as misfortune came without warning. Many of these identified themselves by their reaction and were destroyed. No one outside Sulla's coterie was safe. Anyone who approached the *alba* was accused of being a busybody; anyone who did not approach was seen as expressing disgust. The man who read through the list or asked what was written there fell under suspicion of inquiring about himself and his friends; the man who did not read or ask questions was suspected of grieving over it and was for this reason hated. Tears or laughter became instantly fatal, and thus many were destroyed not because they had said or done anything forbidden, but because they had frowned or smiled.¹⁴

Dio created this imaginative reconstruction long after the fact. A similar picture, however, emerges from an anecdote recorded by Diodorus Siculus, who had ample opportunity to hear of the proscription from first-hand witnesses. In the story, a reader of the list stands mocking and insulting the names of the proscribed, only to find unexpectedly his own name at the very end of the list. Attempting to steal away unnoticed, he is recognized and killed – eliciting the satisfied approval of bystanders.¹⁵

We may record here one final ancient tale of the reading of the proscription. In his epic *Pharsalia*, drenched with the blood of a later calamity, the poet Lucan recalls the events of Sulla's reign of terror, including the proscription, in a lengthy aside.¹⁶ The list itself does not appear in the narrative, but the poet inserts an echo of it into the scene of relatives picking through the carnage, scouring lifeless trunks in search of *notae* that will enable them to identify the body and reunite it with its head for burial.¹⁷ Here, *notae* are distinguishing marks like scars or moles, but the word normally refers to writing. Lucan thus transfers the reading of the list to the horrific scene of its consequences, playing grimly on the contrast between the specificity of the names in the list and the anonymity of the resulting cadavers.

But let us return to the *album*, there to find our portrait of the young Cicero reading: before the dread lists, among the crowd, craning the neck he tells us was long and thin in order to get a better view.¹⁸ Here, we may imagine, were lessons not to be found in books. What Cicero may have learned, and how he

put that knowledge to use, may in part be discovered by reading his two earliest surviving speeches, from two trials argued very much in the shadow of the proscription.

Pro Quinctio (81 BCE)

With the proscription still in effect and the display of new heads slowing but not stopping, Cicero delivered his earliest surviving speech as an orator in the law courts, appearing for the defense in the sort of drearily dull property case that was the mainstay of Roman litigation. The case was probably unwinnable for his client, but Cicero gave it his best shot, putting in an impressive rhetorical performance that was bound to attract some attention, especially since the orator who stood against him was none other than Hortensius, the most celebrated barrister of the day.

At the center of the case was a proscription of the ordinary type, that is, a *proscriptio* or *publicatio bonorum*, which the praetor was prepared to order against Cicero's client Quinctius, to repay debts owed to the plaintiff Naevius. Cicero's involvement was recent, but the case went back several years. Briefly,¹⁹ both parties had entered into a *vadimonium*, a promise to appear in court by a certain date in order to settle their dispute. Quinctius, however, failed to appear on the designated day.²⁰ Naevius obtained sealed affidavits from witnesses and approached the praetor, who granted him a *missio in possessionem*, control of the property in question (in Gaul) in anticipation of its auction, which, however, could only occur after thirty days, the period left for the advancement of claims by other creditors and for appeal by the individual whose goods had been proscribed.²¹ Upon being granted the *missio*, Naevius had posted the required notices (*libelli*) of the impending sale of Quinctius' property. These were ripped down by a certain Alfenus, who announced that he was acting as agent for Quinctius, then away from Rome.²² Meanwhile, Quinctius was expelled by force from the disputed estate in Gaul. After a few further confrontations with Alfenus, Naevius, for reasons that are somewhat unclear, delayed any additional action for a year and a half. He then petitioned the praetor to proceed with the *proscriptio*. Quinctius secured the help of a tribune, who threatened to veto any *proscriptio* unless the parties were first given a chance to present their claims in court. Naevius and Quinctius then agreed to a kind of procedure known as a *sponsio* (on which more below). Both parties appeared before a *iudex*; this was the occasion for Cicero's surviving speech.

To understand Cicero's speech and the parties' *sponsio*, it is necessary first of all to know something about the rise of the formulary system in Roman legal procedure. By the time Cicero began his legal career, the old rites of the *legis actio* were falling rapidly into desuetude. Essentially pantomimes of the violence for which recourse to law was supposed to substitute, the *legis actio* was enacted by a series of gestures and formulaic utterances made by the

interested parties. In the case of a civil suit regarding moveable property, the object itself was part of a performance called the *vindicatio rei*. The plaintiff took hold of the object in dispute and touched it with his staff, thus asserting his ownership. In the case of immoveable property to which a visit was impractical, a synecdochic prop – such as a clod of earth or a fragment of roof tile – was employed in the same manner. Such gestures were accompanied by rigidly invariable statements (*certa verba*) by the parties involved.²³

The jurist Gaius explains the decline of the system of *legis actio* as follows:

Sed istae omnes legis actiones paulatim in odium venerunt. namque ex nimia subtilitate veterum qui tunc iura condiderunt eo res perducta est, ut vel qui minimum errasset litem perderet.

Little by little all these *legis actiones* became unpopular. For as a result of the excessive technical precision of the ancient originators of the legal procedures, things were taken so far that anyone who deviated in the slightest particular lost his suit.²⁴

As a result, Gaius continues, the pantomimes and *certa verba* of the *legis actiones* were replaced by procedures effected *per concepta verba, id est per formulas*. The *concepta verba* or *formulae* were statements crafted by the praetor to fit the particulars of each case. Typically, a *formula* was expressed as a conditional sentence in which the protasis or *intentio* expressed the matter to be decided by the *iudex* and the apodosis described the result of a favorable judgment for the plaintiff.²⁵ The idea could be as simple as: “If the farm belongs to Marcus, then let Lucius give the farm to Marcus.” But the great advantage of the formulary system was that it could be used, in the case of a property dispute, to express more complicated questions of ownership, arising in part from the increasing subtlety of Roman property law.²⁶ The examples of *formulae* subsequently cited by Gaius reveal that their legal and hence syntactical complexity could be considerable.²⁷ This vastly greater ability to express legal subtleties made the formulary system clearly superior to the crudely limited symbolism of the *vindicatio rei*. The basic principle, however, was the same: in place of the synecdochic clod or tile, the text of the *formula* itself was the object of symbolic contention between antagonists who had accepted the mediation of law.²⁸

A simple kind of *formula* (one which may even pre-date the adoption of an extensive formulary system)²⁹ was the *sponsio*, a sort of legal wager in which the “if” part expressed the claim of the plaintiff, and the “then” part provided for the payment of a fine by the defendant to the plaintiff. Cicero represents Quintius in a procedure of this sort. Quintius must have expressed the *sponsio* something like this: “If my goods were not possessed for thirty days in accordance with the edict of the praetor P. Burrienus, do you pledge [*spondesne*] to give me 25 sesterces?”³⁰ Naevius would then have answered,

spondeo. Really at stake in this *sponsio* is the thirty-day *missio in possessionem* granted to Naevius in anticipation of a *proscriptio bonorum*. The case was, therefore, a *praeiudicium* designed to settle a particular aspect of the dispute. If Naevius wins, the *missio* is valid and the praetor can proceed with the sale of Quintius' property. If Naevius loses, the *missio* is disregarded and he must start all over again with his lawsuit. Far less important is his loss of the nominal sum of the wager, which is little more than a way to complete the conditional syntax of the *formula*.³¹

A trial under formulary procedure is essentially a matter of parsing and glossing the text of the *intentio* so that its truth value can be determined by the *iudex*. Where the *intentio* makes reference to law, for example, the actual text of the law can be inserted and the thereby expanded *intentio* can be tested against evidence and testimony. In this particular case, Cicero must gloss the phrase *ex edicto*:

How did the praetor instruct you to take possession? In accordance with his edict [*ex edicto*], I believe. What is the wording of the *sponsio* [*sponsio quae in verba facta est*]? "If the property of P. Quintius was not possessed in accordance with the edict of the praetor [*ex edicto praetoris*] . . ." Let us return to the edict. How then does it instruct that possession be taken? If Naevius took possession in a manner far different from that which the praetor decreed in his edict, is there any reason not to conclude that he did not possess "in accordance with the edict," and that I should therefore win the *sponsio*? None whatsoever. Let us hear the text of the edict.³²

Cicero proceeds to cite from the relevant clause of the praetor's edict, that is, from the *edictum perpetuum*, the collection of praetorial pronouncements (*edicta*) which, though originally made in reference to specific cases, were recorded in generic form as precedent-setting for similar cases in the future. The edict was also called the *edictum tralatitium* because it was passed on from praetor to praetor, each potentially modifying parts of the text upon entering office and adding to it during his term but ultimately leaving most of the clauses inherited from his predecessor intact.³³

The *edictum perpetuum* was written out on an *album* and kept on public display. The edict thus took its place beside the inscribed texts of the "laws" in the technical sense of the term, that is, the *leges* passed by an assembly of the Roman people. *Leges* often, though not always,³⁴ were placed on public view, most famously in the form of bronze tablets, some of which survive, but also (principally in the early period, according to later sources) on *alba*.³⁵ In theory, the praetor's edict was not itself law, but rather a description of how he would administer, in this or that circumstance, the *ius civile*, which arose from interpretation of statutory law, and the *ius honorarium*, the result of his own authority as a magistrate.³⁶ In this sense, the edict was of secondary

importance to the inscribed laws which surrounded it. In practice, however, most *leges* were of little everyday relevance:

Apart from the XII Tables themselves, which were of course a *lex* . . . , statute was not a very fruitful source of law during the republic. Roman legislation . . . was usually of a political character and the development of private law was, in the main, left to the other sources, especially interpretation and magisterial edict.³⁷

“Interpretation” (*interpretatio*) included that provided in juridical handbooks by recognized experts.³⁸ But the most consulted legal text was clearly the praetor’s edict, kept on public view.³⁹ In most cases, the edict was for practical purposes the text of private law. This became increasingly true in property disputes (the major focus of private law anyway) as a result of a growing system of *bonorum possessiones* that arose from the praetor’s ability to assign possession without directly addressing ownership in its strict legal sense.⁴⁰

To the *album* of the edict, the formulary system eventually attached itself, likewise as a set of written precedents: since similar cases inevitably produced similarly phrased *formulae*, the praetors adopted the time-saving device of posting skeleton “fill-in-the-blank” *formulae* on an *album* set up beside that of the edict.⁴¹ Over time, the list of acceptable *formulae* came to be thought of as part of the edict itself. These twin praetorial lists dominated everyday litigation. Most lawsuits will have required first choosing and completing the proper *formula* and then connecting it, before a judge, to the relevant clauses of the edict. Indeed, many cases must have consisted of little more than this.

Naturally, had Cicero’s case for Quinctius been this simple, there would have been no speech. Still, the basic structure is the one just described: Naevius agrees to a *formula* in which he “bets” that his *missio in possessionem* had been in accordance with the edict (*ex edicto praetoris*); Cicero’s goal is to demonstrate that both the *missio* and the *possessio* of Naevius were not, in fact, *ex edicto*; this he does primarily by comparing the text of the edict with the actions of Naevius. His rather unconvincing arguments – probably the best possible under the circumstances – need not be repeated here. We note only one that presages somewhat Cicero’s use of written documents as evidence in his later career: to counter Naevius’ claim that Quinctius had originally deserted a promise to appear in court (*vadimonium*), Cicero produces Quinctius’ day-book (*ephemeris*), which reveals he was out of town on the day Naevius claims the *vadimonium* was entered into.⁴² It is interesting that Cicero places this evidence in the middle of his *argumentatio*, where he would have been taught to tuck away his weakest arguments.⁴³ Perhaps this tentativeness reflects the weakness of his point;⁴⁴ alternatively, the adducing as evidence of documents not immediately connected to the case (here, his client’s diary) may have been a rare or even novel tactic whose efficacy could not be

predicted.⁴⁵ This is not to say that the use of documentary evidence *per se* was uncommon: both the *Rhetorica ad Herennium* and Cicero's own *De inventione* – the latter compiled from Cicero's own school notebooks – devote lengthy discussions to *controversiae in scripto*. These, however, were chiefly cases which centered on the meaning of an ambiguous law or that of an ambiguous document, usually a will or contract, which had legal standing. Cicero's use of Quinctius' *ephemeris* already took him beyond the kinds of documentary controversies foreseen in his rhetorical training; just how far he ultimately went will be a major subject of subsequent chapters.

Cicero's citation of written evidence completes, already in his earliest surviving speech, a tripartite picture of the advocate as *reader*. First, he must read, and carefully parse, the *formula*. Second, he must read closely the relevant law or laws (in this case, clauses of the praetor's *edictum*). Finally, where available, he must read the written documents that may provide evidence for his case.⁴⁶

An additional text appearing in the *Pro Quinctio* merits a separate discussion. As has already been mentioned, Naevius, upon being granted a *missio in possessionem* by the praetor,⁴⁷ posted the required placards (*libelli*) advertising this fact – presumably by announcing the sale at the end of thirty days – in conspicuous locations.⁴⁸ The role of writing here is one by now familiar to us: the *libelli* were able to describe a condition of semi-ownership that could not be announced simply by seizing the property.⁴⁹ The *libelli*, however, were ripped down by a certain Alfenus, who – by that very act, apparently – announced himself to be Quinctius' agent.⁵⁰ More than just vandalism, Alfenus' gesture clearly was recognized as a legitimate public contestation of Naevius' claims, perhaps on the analogy of the *vindicatio rei*, the *libelli* being comparable to the clod or tile. But the incident also reveals, with uncommon explicitness, an important general principle: a written text can mean not only as a text but also as an object.

Libelli like those of Naevius are also interesting for another reason: as official written announcements of an imminent *venditio bonorum*, they are probably the closest legal precedent for Sulla's proscription lists. The latter still loomed nearby. Is it possible to find in Cicero's arguments for this dull property case, mired in technicalities, any echo of its starkly violent historical context? Though not usually emphasized by commentators, the case seems to have had a political character as a result of the contrasting allegiances of the litigants: Naevius had strong support from important members of the Sullan party, whereas Alfenus and the tribune who had halted the *proscriptio* were Marians.⁵¹ Indeed, by the time Cicero argued the case, Alfenus had fallen victim to Sulla's proscription.⁵²

As he concludes his speech, Cicero indulges in a *conquestio*, an appeal to the judges' pity and mercy. Cicero describes the indifference with which Naevius had greeted the pleas for justice of Quinctius, whose deceased brother had been Naevius' partner and whose cousin was his wife:

Finally Quinctius submitted to the supremely arrogant sneer of his very enemy: with tears in his eyes, he took the hand of Sextus Naevius himself – a hand well practiced in proscribing the property of his kinsmen; he beseeched him by the ashes of his own dead brother, by the name of kinship, by Naevius' own wife and children, who had no nearer relative than P. Quinctius himself, at last to take pity on him, to have some thought, if not for kinship, then at least for his old age, if not for the man, then at least for human decency . . .⁵³

In those days without quarter, any call for mercy must have had a certain resonance. Naevius' indifference to his kinsman may too have struck a precise chord: Plutarch reports that Sulla's proscription threw into crisis the kinship obligations that were fundamental to Roman society, for even the "brother, son, or parents" who harboured a proscribed person were themselves subject to execution.⁵⁴ But the most striking feature of the passage is Cicero's reference to the "hand well practiced in proscribing the property of kinsmen" (*manum . . . in propinquorum bonis proscribendis exercitatam*). In the first place, Cicero nowhere else refers to other *proscriptiones* by Naevius; presumably their multiplication here is simply the product of rhetorical exaggeration. More curious is the connection of the proscription to Naevius' hand. Of course, the synecdochic hand stands in for the whole person and specifically suggests the exercise of violence. But by emphasizing the hand's "practice," Cicero may also be conjuring a picture of the ruthless and miserly Naevius setting down in his accounts the amount fetched at auction by each item of proscribed property, or even writing out the *libelli* which first announced the sale. If the reference to Naevius' hand can be made to combine both writing and violence, then Cicero could not have chosen a more topical theme.

Pro Sexto Roscio Amerino (80 BCE)

Cicero soon would have occasion to be more explicit. One year later, he argued his first criminal case, in the first murder trial since before the Sullan terror.⁵⁵ A wealthy man from Umbria named Sextus Roscius had been murdered in a Roman street on his way home from dinner. Upon learning of the victim's wealth, Sulla's powerful freedman Chrysogonus contrived – together with the murderers themselves, according to Cicero – to have the victim's name inserted into the proscription list, though the list had been closed several months earlier. The man's property was confiscated, and Chrysogonus arranged to buy it for a fraction of its value. Outrage in the victim's hometown of Ameria prompted a delegation to Sulla; the mission was intercepted by Chrysogonus, who promised to have the name erased from the list and to restore the property to the victim's son and heir, also named Sextus Roscius, Cicero's client. The promises, however, were a sham carried out with the collusion of a member of the delegation. Chrysogonus proceeded to master-

mind a plot to have young Roscius accused of his father's murder. Cicero's client appears before the *quaestio perpetua de sicariis*, charged with parricide.

Commentators have puzzled over an evident paradox in the charges against Sextus Roscius: if his father was proscribed, how can he be charged with murder, since anyone, even a kinsman, could carry out the sentence of death? If his father was not proscribed, why was his property sold at auction? The various attempts to explain the contradiction may be summarized as follows:

- 1 Cicero could not exploit the obvious loophole in the charge because it would have required suggesting that his client might actually have killed his father but should be absolved because the latter was proscribed.⁵⁶ This explanation, however, ignores Cicero's capacity for irony: he could easily have exposed the contradiction without seriously suggesting his client's guilt. Besides, the glaring contradiction would have been obvious to everyone, even without Cicero calling attention to it.
- 2 The father *was* added to the list of the proscribed and his property consequently sold at public auction, but Chrysogonus later removed the name, as he had promised the delegation from Ameria.⁵⁷ Before the son could attempt to regain his property, however, Chrysogonus and his collaborators orchestrated the murder charge. With the son convicted and executed, no one else would attempt to challenge in court their ownership of the father's property, even though the pretense of it having been acquired as a result of its owner's proscription would have collapsed. But such a strategy would seem doomed to backfire, since even a cursory trial would inevitably make the irregularities more evident, and since the delegation from Ameria proved that young Roscius had friends who, if angered over his loss of patrimony, would surely not endure his being accused of parricide.
- 3 The most ingenious solution regards the clear evidence, given by Cicero himself in the speech, that the auction of confiscated property regarded not one but two categories of outlawed individuals: (1) the *proscripti* in the strict sense, that is, those whose names had been placed on the *album*; and (2) those persons "who were killed behind enemy lines" ("*qui in adversariorum praesidiis occisi sunt*"). Chrysogonus reckoned the father among the second category, freeing his property for confiscation, but not his son from a potential murder charge. This thesis is by far the best solution and is assumed in most of the discussion below.⁵⁸ Nevertheless, it solves one contradiction but creates a new one, as the father was killed in Rome, scarcely *in adversariorum praesidiis*.

Like most proponents of any of the explanations considered above, we must therefore appeal to a final explanation which, properly speaking, could by itself account for the paradox with which we began:

- 4 Given his influence, and given the fear and confusion of the day, Chrysogonus could expect the incoherence of his case to go unnoticed. Cicero himself implies as much in a general way by first suggesting in his *proemium* that the prosecution does not expect any spirited defense and then referring repeatedly to this fact later in the speech, by which point his own skill and preparation have thrown his opponents into unexpected consternation.

Given that the prosecution's paradoxical position cannot be resolved but only rendered less obvious or less liable to challenge, why does Cicero – who scarcely seems intimidated by Chrysogonus – never provide a detailed exposé of the contradictions inherent in the prosecution's case? Indeed, on closer inspection it often seems that Cicero has layered onto the prosecution's incoherence his own deliberate obscurity.

To understand what the ends of Cicero's vagueness might be, it is helpful to consider that the confusing elements of the case may be traced back to three written texts: a law regarding the proscription, the account books of the public treasury, and elusive lists of the "proscribed." Each is considered in turn below.

Lex Cornelia de proscriptione

Cicero's own citation⁵⁹ of the law that provided for, among other things, the auction of the property of outlawed persons of both categories is the only evidence for the original text. Michael Crawford reconstructs as follows:

<Curato> ut eorum bona veneant qui proscripti sunt eorum<ve> qui in adversarium praesidiis occisi sunt.⁶⁰

Cicero, however, does not quote directly: he prefaces his citation with *scriptum enim ita dicunt esse*, "They say that the text is as follows." Cicero goes on to note that the law also fixed a date for the end of the proscriptions and auctions:

Opinor enim esse in lege, quam ad diem proscriptiones venditionesque fiant, nimirum kalendas Junias.

I believe that in the law is the final date on which sales and proscriptions may occur, namely, June 1.⁶¹

Here, too, Cicero disavows any direct knowledge of the text. Indeed, he introduces his discussion of the law by claiming to know not even precisely to which law he is referring:

Qui potuerunt ista ipsa lege quae de proscriptione est, sive Valeria est sive Cornelia (non enim novi nec scio), verum ista ipsa lege, bona Sex. Rosci venire qui potuerunt?

Who were enabled, by that particular law which regards the proscription, either the *Lex Valeria* or the *Lex Cornelia* (for I have not examined it and do not know), but by that particular law, who were enabled to sell the property of Sextus Roscius?

It is not clear whether Cicero professes confusion between two laws or between two possible names of one law; it is therefore impossible to establish the existence of a *Lex Valeria*, harder still to guess at its nature. Even the purpose and contents of the *Lex Cornelia* are no easy matters to establish.⁶² But in any case, in Cicero's contrast between *ista ipsa lege* and his professed confusion between the two laws (or two names), he seems to be making a dry joke. What, however, is his point?

Cicero's deliberate vagueness is similar in form to that which he employs on a very different occasion. Having suggested, with mock generosity, that the prosecutor Erucius is not altogether ignorant of literature, Cicero condescendingly offers an allusion to a popular play. But he immediately implies that he himself is above remembering precisely, for he claims to be unsure of the relevant character's name: *nam, ut opinor, hoc nomine est*.⁶³ Surely, though, there can be no similar point in a lawyer pretending to be above the precise text of the law. It is possible that by feigning ignorance Cicero means to express contempt for the flimsy way in which the law or laws in question gave retroactive legitimacy to Sulla's lawless terror: Cicero has not bothered to consult the precise text of the "law" because it scarcely deserves even to be called such.⁶⁴ But such a generic criticism in the form of disdain for the law's text seems bizarrely inappropriate here, given that Cicero cites the law in order to make the express point that its wording could not be made to apply to Roscius senior.

It seems somewhat more likely that Cicero means what he says (three times): the *Lex Cornelia* (as well as the *Lex Valeria*) was not available for consultation. Would this situation have been exceptional? New laws could be posted on *alba* or bronze tablets, but scholarly opinion is drastically divided on the question of whether such posting was automatic.⁶⁵ If, however, nothing were remarkable about the fact that the text of the *Lex Cornelia* was not readily available, then Cicero would have no reason to mention his difficulty ascertaining its wording. In fact, we know that Sulla posted the contemporary *Lex Cornelia de XX quaestoribus*, since fragments of the bronze tablets survive.⁶⁶ It has been demonstrated that any requirement (or, at least, tendency) to set up durable copies of the law likely had its origins in the reforms of the Gracchan period.⁶⁷ If Sulla wished to break with this established practice, then the law authorizing the bloodiest component of

his anti-democratic reaction provided an excellent moment to do so. Cicero's repeated emphasis on his own ignorance of the law's content would thus be a not-so-subtle complaint, readily understood by his audience, that no inscription of the law was on display.⁶⁸

Tabulae publicae

Proceeds of the auctions of the property of the *proscripti* and the *adversarii* were deposited in the public treasury or Aerarium, located in the podium of the temple of Saturn, at the beginning of the ascent from the Forum to the Capitoline.⁶⁹ Each auction therefore generated an entry in the *tabulae publicae*, the accounts that recorded deposits to and disbursements from the state treasury.⁷⁰ Cicero makes explicit reference to these records in a passage already considered in relation to the *Lex Cornelia*:

Opinor enim esse in lege quam ad diem proscriptiones venditionesque fiant, nimirum Kalendas Iunias. aliquot post menses et homo occisus est et bona venisse dicuntur. profecto aut haec bona in tabulas publicas nulla redierunt nosque ab isto nebulone facetius eludimur quam putamu, aut, si redierunt, tabulae publicae corruptae aliqua ratione sunt; nam lege quidem bona venire non potuisse constat.⁷¹

I believe that the law gives a final date for the proscriptions and sales, namely June 1. A few months after that date, a man was killed and his property is said to have been sold. Clearly either none of that property was entered as income in the public accounts and we are being laughed at by that blockhead even more jollily than we realize, or, if it was entered, the public accounts have been corrupted in some way; for it is clear that the property could not have been sold according to the law.

The sale of Roscius' property had occurred after June 1; Cicero's point, therefore, is that Chrysogonus either arranged that the deposit would not be recorded in the *tabulae publicae* (or, perhaps, not made at all) or that the deposit would be pre-dated before June 1 (the meaning of Cicero's reference to "corruption" of the records). That the *tabulae publicae* could normally be consulted and even presented in court as evidence is clear from the Verrines.⁷² That Cicero does not do so in this case may mean that here too the regime had restricted access to records that usually were available, at least to some extent, for public consultation and review.

Lists of the "proscribed"

Cicero twice refers to *tabulae* on which Chrysogonus wrote down the name of

Sextus Roscius senior. The first reference comes in his reconstruction of the plot between Chrysogonus and the two townsmen of Ameria (named Titus Roscius Capito and Titus Roscius Magnus) to seize the property of the recently murdered man:

At a time when the proscription was no longer being mentioned, and even those who formerly had found cause for fear were returning and believed that they were at last free from danger, the name of Sextus Roscius was set down on the *tabulae* [*nomen refertur in tabulas Sexti Rosci*], though he was a man who had zealously supported the nobility; Chrysogonus became bidder and buyer; the three loveliest farms were handed over to Capito as his own property (he possesses them to this day); Titus Roscius there, in the name of Chrysogonus, as he himself admits, went after the rest of the possessions. This property, worth 6,000,000 *sesterces*, was bought for 2000.⁷³

The second reference occurs slightly later, when Cicero describes how the delegation from Ameria was duped by Chrysogonus, with the help of Capito, and sent home without ever laying their complaint before Sulla:

When Chrysogonus promised that he would remove the name of Sextus Roscius from the *tabulae* [*sese nomen Sex. Rosci de tabulis exempturum*] and turn over the farms free-and-clear to his son, and when T. Roscius Capito, who was among the ten representatives, added his own promise that this would be done, these old-fashioned men, who imagined others to have natures like their own, believed them, and they returned to Ameria without having presented their case before Sulla.⁷⁴

Naturally, by these two references to the recording (*referre*) and erasing (*eximere*) of the name of Sextus Roscius, Cicero is suggesting a place among the names of the proscribed. But what list exactly is meant by *tabulae*? *Tabula* can designate a wide range of written texts, including practically any text on a wooden support. The term could thus refer to the whitened boards of the proscription; indeed, most ancient authors who discuss the proscription prefer *tabula* to *album*. Commentators traditionally have assumed that the *album* was dismantled with the closing of the list on June 1, 81 BCE: this is why the question of whether Sextus Roscius senior was on the list at the time of the trial was not a simple matter of going and reading through the names. Given, however, that the *Lex Cornelia* leveled specific sanctions against the children of the proscribed, the list had continuing legal importance, and we would expect it to be available for consultation. Indeed, it seems more likely than not that the actual *album* was for this very reason left on display even after the closing of the list on June 1.

Cicero may well mean for his audience to think of the whitened boards containing the names of the *proscripti* (whether or not they were still on view), but if so, he is being deceptive or at least inexact, since, as we have seen, Roscius probably was not placed among the *proscripti* but among the *adversarii*, who did not figure in the public list.

Tabulae could also be “tablets,” waxed or not.⁷⁵ If the *album* was dismantled, then the list may have been preserved in an “official copy” on tablets. If this was in the control of Chrysogonus as Sulla’s assistant, then it would have been a far more convenient locus of alteration than the *album* itself. Again, however, if Cicero means for his listeners to think either of the *album* or of a copy, he is ignoring the fact that Roscius appeared not among the *proscripti* but instead belonged to the second category of outlaws.

Whatever he may want his listeners to imagine, Cicero makes literal sense only if the word *tabulae* refers to something more than a list of the *proscripti*. Of those persons *qui in adversariorum praesidiis occisi sunt*, T. E. Kinsey imagines a second, unpublicized list, “comprised from reports that came in.”⁷⁶ The hypothesis of a second list is not unreasonable, but there is no other evidence for its existence. Unlike the list of the proscription, which at least purported to be part of a magistrate’s edict, a list of the *adversarii* would itself have had no defined legal value. If the Sullan regime, specifically Chrysogonus, kept such a list, then it did so for the purposes of its own record-keeping. In theory, such records could have served to enable Sulla to supervise the work of his assistants, but the case of Sextus Roscius seems to demonstrate rather dramatically that he did not do so. The only real purpose for a list of killed *adversarii* is to ensure that the property of each was eventually sold. But since Chrysogonus controlled both the list and the sales, it is hard to see how his promise to “erase” a name could have any meaning except as a metaphor for changing his own mind.

The Romans used waxed tablets to keep accounts, *tabulae accepti et expensi*,⁷⁷ often referred to simply by the single word *tabulae*.⁷⁸ We already have seen such a usage in Cicero’s reference to the accounts of the state treasury simply as the *tabulae publicae*. Unless Chrysogonus’ dishonesty is absolutely thorough – or, as Cicero puts it, unless “we are being laughed at by that blockhead even more jollily than we realize” – the *tabulae publicae* provided one list where we can be sure that Roscius senior appeared, if not by name then at least by reference to the sum for which his property was sold. And we may add that the *tabulae publicae* were, in the final reckoning, indifferent to any distinction between *proscripti* and *adversarii*: whether named in the *album* or killed in enemy territory, all alike suffered *proscriptio bonorum*, and the price fetched by the property of each dead man was duly set down on the tablets as a deposit.

Given this last observation, it is interesting that Cicero’s two references to *tabulae* above occur in the immediate context of discussion of the sale of Roscius’ property. As suggested above, Cicero may hope that his unelaborated

use of *tabulae* will suggest to his audience a list of the *adversarii* and perhaps even invite confusion with the *album* of the proscribed. But at a literal level Cicero seems to take care to commit himself only to the assertion that Roscius' property appears among *proscriptiones bonorum* recorded in the *tabulae publicae*. Possibly, Cicero himself is not sure how the regime is keeping track of its victims. He thus may deploy the ambiguities inherent in the word *tabulae* in order to conceal his own uncertainty. Surely, however, Cicero could more deftly have avoided revealing his own ignorance to his audience: he could, for instance, have avoided altogether the question of when and where Roscius was set down among the proscribed by framing his reconstruction in terms of what Chrysogonus had asserted and done, rather than what he had written (and erased).

A better explanation is possible. Suppose that Cicero knew that the only text involved in the plot to seize the property of the elder Roscius was the record of sale in the *tabulae publicae*. Chrysogonus and his accomplices had seized the murdered man's property for auction perhaps without any precise plan to identify him as a *proscriptus* or *adversarius*: the sale was entered into the *tabulae publicae*; the former owner could even have suffered confiscation for some reason unconnected to the *Lex Cornelia*; given the position of Chrysogonus, they calculated, no one would press them for details. Even when the delegation from Ameria met with Chrysogonus, there may have been no suggestion that Roscius had been reckoned among the outlaws. They could simply have been told that the sale had been an error; if Chrysogonus really promised to "remove the name of Sextus Roscius from the *tabulae* and hand over the property free-and-clear to his son," then what he meant was that he would cancel the sale by erasing the relevant entry in the *tabulae publicae*. In other words, there need not have been any question of Roscius appearing in any list of *proscripti* or *adversarii*. That suggestion, therefore, may have come no sooner than Cicero's speech. Exploiting the linguistic ambiguity produced by the fact that Roscius, though not *proscriptus* in the sense of Sulla's *album*, was *proscriptus* in the sense of one against whom was ordered a *proscriptio bonorum*, Cicero begins to imply the existence of a far more nefarious plot than there need ever have been. His unadorned references to *tabulae* suggest a list of outlaws and even conjure an image of Sulla's *album*, but they literally refer only to the record of sale in the *tabulae publicae*. Even his reference to the writing and promised erasure of the *nomen* of Sextus Roscius, a seemingly unmistakable reference to a list of names, is a clever bit of ambiguity, for *nomen* in Latin could also mean an entry of credit or debit in an account book.

The fiction makes the speech a masterpiece of psychological manipulation. We already have seen how tradition made Sulla's *album* an improvement over unrestrained and unpredictable slaughter. What, therefore, must be said of the context immediately following as described by Cicero, where the text of law was a mystery, and the list of the condemned had receded into

inaccessible and corrupt public documents and the hypothesized notebooks of the dictator's secretary? Surely the only thing worse than the *album* would be a list with the same effect, but which no one could see. (Never mind that this had not happened yet, since Roscius was "proscribed" only *after* his death.) Sulla's list lurks – along with the furtive machinations of Chrysogonus – in the shadows of Cicero's arguments, calling forth from the memories of the audience their own dark anxieties during the vicissitudes of Sulla's terror. And with his vague references to unspecified *tabulae*, Cicero conjures a new and potentially more terrible nightmare. Here proscriptions proliferate, not in the Forum, but quiet and unseen, in the retreats of men like Chrysogonus.⁷⁹

The speech's psychological and rhetorical climax comes in Cicero's conclusion. He suggests that the prosecution of his client was the first step in a new campaign of persecution of the children of the proscribed:

An vero, iudices, vos non intellegitis nihil aliud agi nisi ut proscriptionum liberi quavis ratione tollantur, et eius rei initium in vestro iure iurando atque in Sex. Rosci periculo quaeri?⁸⁰

Members of the jury, do you not understand that what is happening is nothing less than an attempt to do away with the children of the proscribed by any possible means, and that an inauguration of this effort is being sought in your oath of office and in the predicament of Sextus Roscius?

In fact, the children of the proscribed had already been the target of the *Lex Cornelia*, which expressly forbade any attempt on their part to regain their parents' property and barred them from seeking public office. Cicero capitalizes on this fact to suggest that they may become objects of a widening persecution with lethal intent. A few sentences later, he has quietly transformed the *liberi proscriptionum* into *proscripti* themselves:

Si idcirco sedetis, ut ad vos adducantur eorum liberi, quorum bona venierunt, cavete, per deos immortales, iudices, ne nova et multo crudelior per vos proscriptio instaurata esse videatur.⁸¹

If you are seated there for this reason, namely, so that the children of those persons whose property was sold may be brought before you, beware, by the immortal gods, members of the jury, lest you seem to have been used to erect a new and far crueler proscription.

Note Cicero's evasive formulation *eorum . . . quorum bona venierunt*, by which he avoids specifying the legal reason for which the property of Roscius senior was sold. Thus in a single sentence, we see Cicero falsely imply that Roscius senior was proscribed and then extend this proscription to include his son. At stake

is not only the proscription of the new generation, but, more broadly, a “new and far crueler” generation of proscription, which Cicero’s entire speech has carefully prepared his listeners to dread. We are perhaps to imagine that the “writing” always implied by *proscriptio* is here to be carried out by the jurors, who – if Cicero’s warning comes true – will write *C* for *condemno* on the *tabulae* provided for their verdicts.

In truth, the next proscription would look in form much like the first and would come only after four decades. Cicero’s doomsaying had been designed to secure the acquittal of his client, which was achieved.⁸² It is difficult, therefore, to assess Cicero’s own level of concern for the immediate future, unless his willingness to take on the case suggests that he was fairly unworried, an interpretation which depends on one’s estimate of Cicero’s courage. What Cicero’s arguments do tell us is that he could count on some degree of anxiety in his listeners, and that he knew how to intensify this into dread, and from this to raise palpable specters. That these were built of tablets is no accident: *tabulae*, *libelli*, *alba*, and other texts were, as we have seen, nearly ubiquitous in Roman law and procedure. They necessarily were objects of Cicero’s training; his precociousness in using them is visible in the *Pro Quintio*. But what Sulla and Cicero realized, and what each in his own way helped to encourage, was that documentary culture could have psychological resonance. In Sulla’s bloodstained Forum, first tentatively with the *Pro Quintio*, then boldly in the *Pro Roscio Amerino*, Cicero the young reader found written texts at the heart of Rome’s newest fears.

CICERO TAKES A BATH

An introduction to the prosecution of Verres

From the cradle to the grave a Roman was spied on without
ceasing . . .

(Guglielmo Ferrero)¹

When we next meet Cicero, he is traveling up the Tyrrhenian coast on his way to Rome. He is now thirty-three years old, and in the six years that have passed since the defense of Sextus Roscius, he has seen a great deal of the world. First, a few years in Greece and Asia Minor had refined his oratorical skills, given measure to his voice, and improved his health – among the changes first noticed by the casual observer was the fact that the scrawny young man from Arpinum had gained weight (*corpori mediocris habitus accesserat*).² Thus “pretty well transformed” (*prope mutatus*), in his own description, Cicero had returned to Rome and had begun in earnest his political *cursus* by winning election to the quaestorship, an office he was sent to serve in the western administrative district of the Roman province of Sicily, with its seat at Lilybaeum, modern Marsala.

A “new man” in more than just the sense in which Romans thus designated a family’s first climber from equestrian rank to the senatorial order, Cicero pursued his duties with efficiency and vigor, and at their conclusion a year later set out again for Rome to claim the place in the senate his term as quaestor had won him. Indeed, he expected far more than this: confident that his quaestorship had been “the only topic of conversation in Rome,” Cicero expected a grateful *populus Romanus* to lavish him with all manner of honors.³ “I had conducted my quaestorship in Sicily in such a manner,” he later recalls, “that I supposed that the eyes of everyone were fixed on me and me alone, and I fancied that I had acted out my office on some stage set up for all the world to see.”⁴

On the way back to Rome, Cicero’s ship put in at the northern end of the Bay of Naples, where the so-called Phlegrean Fields were dotted with luxurious villas and bathing resorts that clustered around the area’s numerous hot springs. Cicero landed at Puteoli, modern Pozzuoli, perhaps with the intention of continuing the journey to Rome by land.⁵ By chance – Cicero

at least claims it was by chance – this was precisely the period in which the place was thronged with the *lautissimi*, for which we might say “the beautiful people,” but since the word literally means “the very washed,” Cicero doubtless is making a joke. We may well suppose that these rich and elegant bathers delighted in having, at least for a while, nothing whatsoever to do with the Great *Unwashed*.⁶

Years later, Cicero had occasion to recount what happened next. “I nearly fainted,” he reveals, “when someone asked me on what day I had left Rome and whether there was any news.” Cicero replied that he was returning from his province, prompting an apology: “Oh God, that’s right – you’re coming back from Africa, aren’t you?” Fuming, Cicero snapped back, “No, from Sicily.” At this point, Cicero tells us, a know-it-all butts in and berates his fellow bather, “Oh come on, don’t you know that he’s been quaestor at Syracuse.” Syracuse was the provincial capital and seat of the governor and one quaestor, but Cicero had been posted to Lilybaeum, on the other side of the island. How to respond to such humiliating disappointment? Cicero was here, as elsewhere, more than anything else a survivor, and besides, only one real option was open to him: “I quit growling,” he says, “and made myself one of those who had come for the waters.”

Cicero learned two lessons at Puteoli. The first was that he liked the place: he eventually would own a villa there, as well as two others along the Neapolitan coast.⁷ The second lesson, provided by the conversation recounted above, led Cicero to decisions not about *otium* but rather about the active life:

Nam postquam sensi populo Romano aures hebetiores, oculos autem esse acres atque acutos, destiti quid de me audituri essent homines cogitare; feci ut postea quotidie me praesentem viderent; habitavi in oculis . . .

After I came to realize that the Roman people have rather blunted ears, but that their eyes are keen and penetrating, I stopped giving thought to what people might *hear* about me; I took care that from then on they would see me every day in person; I lived before their eyes . . .⁸

Cicero’s emphasis on eyes is striking: he will live in the public eye, that is, in the “keen and penetrating” eyes of the *populus Romanus*, even at the occasional expense, he goes on to say, of being unable to close his own for sleep.⁹

Cicero tells the story of his visit to Puteoli twenty years after the fact, in an extended reminiscence that supposedly answers a comment by a junior prosecutor named Cassius in the trial of Plancius, defended by Cicero in a surviving speech. Cicero follows the comments quoted above with the reflection that his eventual success in being seen by the public had required efforts no one saw:

Ecquid ego dicam de occupatis meis temporibus, cui fuerit ne otium quidem umquam otiosum? Nam quas tu commemoras, Cassi, legere te solere orationes, quum otiosus sis: has ego scripsi ludis et feriis, ne omnino umquam essem otiosus.

And why should I be talking about the times when I was officially busy, given that I have never even had any leisurely leisure? For those speeches you mention reading in your leisure time: I wrote them during games and holidays, lest I ever be at leisure at all.¹⁰

Looking back over a brilliant career, Cicero thus uses the episode at Puteoli to suggest a chain of principles by which he has lived since: to be talked about in Rome, one must be seen; to be seen in public, one must speak in public; to be ready to speak in public, one must write in private. Back in Puteoli, Cicero's ideas may not yet have been so clear, especially as he slipped through the sulfur vapors into a bather's anonymity. But this was only temporary: soon Cicero would be one of the most visible men in Rome.

A first look at the prosecution of Verres

In the end, Cicero's hard work in Sicily would turn out not to have been in vain. Sicily, after all, was scarcely an insignificant place. Home of a Greek culture that was by now more than half a millennium old, it was also the site of a massive slave-driven farming industry that was key to Rome's survival. Sicily's ancient and modern wealth made it particularly attractive to corrupt Roman governors, and after Cicero's departure it fell prey to one whose greed rendered him especially ruthless: Gaius Verres. At the end of Verres' three-year term, the Sicilians began to seek an advocate in Rome to bring a case against the former governor before Rome's standing extortion court. Cicero was young, but of proven talent; his honest quaestorship had won the Sicilians' respect; and though not often mentioned in this regard, most of Cicero's clients in recent years had been revenue contractors (*publicani*), a fact which gave him not only specific expertise for the technical aspects of the case but also, presumably, specific connections to successful members of the equestrian order for whom the excesses of men like Verres meant bad business. The case against Verres came in the midst of an indignant and concerted effort by the *equites* to regain control of the extortion court, taken from them and given to the senatorial class by Sulla, a context of which Cicero constantly reminds the jury in the published speeches.

Despite the nefariousness and notoriety of Verres' crimes, which ranged from the looting of Ancient Greek temples to the mutilation and execution of Roman citizens, the consensus in Rome was that he would be absolved. He was to be defended by the most famous lawyer in the city, Hortensius; where rhetoric failed, Verres' immense wealth could be used to bribe

members of the jury. The jury in any case would be composed of Verres' fellow senators, and those who had not already profited illegally from duties in the provinces might hope one day to do so. True, the defense suffered an initial setback when an attempt to have the case given not to Cicero but to an inept and possibly sympathetic prosecutor failed, but Hortensius bounced back with a series of delaying tactics that made it likely that the case would be pushed forward into the following year, when he himself would be consul, an election he had won, it seems, with Verres' money.

Why did Cicero win?

Commentators on the case, starting with Cicero himself, may exaggerate somewhat its hopelessness in order to render the young orator's triumph that much more glorious. Still, it is probably fair to say that anyone in Rome who expected before the opening of the trial that Cicero and the Sicilians would emerge victors was betting on the underdogs. But if Cicero's subsequent admirers are not far from the truth in their description of what he was up against, they have tended to have only a dim idea of why he prevailed. Indeed, for many ancient readers and probably for most medieval ones, the logical assumption was that Cicero won by the merit of his speeches for the prosecution, available for reading and frequently used for rhetorical study. If modern scholars tend to acknowledge what is known from sources other than the speeches themselves – namely, that Cicero spoke only briefly, delivering roughly a sixth of the surviving material in court before Verres fled into voluntary exile – they have not entirely abandoned the notion that Cicero won the case and enormous fame for the same reason he has remained famous ever since, that is, for his command of language and rhetoric. But in 70 BCE, before the speeches that only seemed to have been delivered against Verres became staples of libraries and classrooms, Verres sat sweating in the August heat of the Roman Forum. Was it really Cicero's *eloquentia* that so quickly convinced him and his advisors, once so confident, that conviction was inevitable?

Long ago Plutarch provided a different explanation. In his biography of the orator, he says that Cicero convicted Verres “not by speaking, but, in a way, by not speaking.”¹¹ Plutarch is referring to the novel format in which Cicero chose to prosecute the case as a result of the time constraints produced by Hortensius' delaying tactics. Traditionally the prosecutor built his entire case in a long, elaborate first speech which tended to rely more heavily on his oratorical skill than on the evidence itself, which was presented later in the trial. Frank Hewitt Cowles, author of a book-length study of the case, describes Cicero's innovation thus: “He explained that the necessity for haste had compelled him to abandon any idea of making an elaborate speech, that he would simply produce his witnesses and let them state the

facts.”¹² Cowles and Plutarch thus suggest that it was Cicero’s evidence, and not his eloquence, that vanquished Verres.

Plutarch’s key to understanding the case against Verres has largely been left to rust by scholars, who have preferred to discuss the words Cicero never spoke in court rather than the evidence he actually presented. Even scholars who note the importance of Cicero’s evidence tend to be imprecise about its nature. Lily Ross Taylor is more careful than most but still inexact:

On the first day, Cicero presented a list of the witnesses. Their number was legion, and in addition there was a large supply of official records and documents. Cicero mentions some thirty-five individuals by name and speaks, without giving the names, of numerous representatives of the Sicilian cities.¹³

Taylor’s drop from witnesses who are “legion” in her first sentence to “thirty-five individuals” and “numerous representatives” in her second is rather vertiginous. Nor is it clear that Taylor’s count of thirty-five private individuals whom Cicero “mentions” corresponds to the actual number who gave testimony before the court. In the five published speeches of the second, unrealized phase of the trial, Cicero provides extended commentary on the evidence delivered earlier, which he reviews, we assume, nearly piece by piece. Yet in all five speeches Cicero calls for the reading of the oral testimony of only nine private individuals, to whom may be added roughly as many more persons whose testimony Cicero mentions without reading. If there were many witnesses, then the overwhelming majority of them belonged to the category mentioned second by Taylor, the “representatives of the Sicilian cities.” Cicero mentions ten or so cities that sent official delegations to give public testimony, but even if each of these included several persons, they scarcely form the stream of witnesses Taylor asks us to imagine filing before the court. As we shall see, however, the evidence Cicero marched before the seated *iudices* may be called “legion” without gross hyperbole, but it consisted not of witnesses who, in Cowles’s phrase, came to “state the facts,” but rather of the other class Taylor mentions in passing: the “official records and documents” of which she notes only “a large supply.”

Indeed, one is better served by the phrases used by Cicero himself to designate the mass of evidence presented to the jury: *Nunc hominem tabulis, testibus, privatis publicisque litteris auctoritatibusque accusemus*, “Now let us accuse the man with account books, with witnesses, with public and private documents.”¹⁴ Only the second of these, *testes*, were living witnesses present to testify at the trial; the others were all written texts of one sort or another. Cicero uses a similar formulation in the last sentence of the speech delivered for the first *actio*, immediately preceding the presentation of evidence. He formally states the charge against Verres and then makes a promise to the jury:

Hoc testibus, hoc tabulis privatis publicisque auctoritatibus ita vobis planum faciemus ut hoc statuatis: etiamsi spatium ad dicendum nostro commodo vacuosque dies habuissemus, tamen oratione longa nihil opus fuisse.

We will make this so plain to you with witnesses, with private account books and with certified public documents that you will come to the following conclusion: even if we had had time for speaking at our leisure with several days to spare, nevertheless there would have been no need of a long speech.¹⁵

The prosecutor abandons his *oratio longa* and asks the jury to turn their attention instead to his witnesses and to the eloquent mass of incriminating documents he has brought before the court. Let us now turn to a first picture of this body of evidence and of the means by which Cicero came to possess it.

A few days in Syracuse

The temptation for scholars to exaggerate the importance of human witnesses at the expense of written evidence in the trial is probably to be explained by the fact that wronged Sicilians gently encouraged by Cicero to recount the horrors and injustices of their victimization by Verres make for better – or at least more starkly dramatic – theater. Cicero himself was unable to resist a similar temptation to the picturesque when, later in his career, he looked back at the period of his collection of evidence in Sicily: “I went to the huts of the ploughmen; from their very plough-handles the men spoke to me.”¹⁶ This vignette can scarcely have been typical: Cicero had only fifty days to collect evidence, and he clearly spent most of that time in cities, whence came nearly all of the *multitudo litterarum et testium*,¹⁷ “the abundance of documents and witnesses,” with which he proudly returned.

For a more accurate picture of Cicero at work collecting evidence in Sicily, let us turn to several interlocking episodes he has occasion to recount at length, though in separate places, in the published speeches. We find him in Syracuse, poring over a corrupted account book. Cicero’s normal procedure upon entering one of the Sicilian cities has been, he tells us, to “inform the senate and people of the service and deliverance from injury I had come to offer.”¹⁸ In every case he has gone away with “instructions, official representatives, documents, and written testimony.”¹⁹ But at Syracuse, false reports of the city’s loyalty to the former governor have dissuaded him from approaching the senate and led him instead to seek information and evidence from the Roman citizens there: “I was examining their account books and becoming acquainted with their wrongs.”²⁰ In the midst of his investigations, Cicero decides he needs to rest: “After I had been dealing with this disquieting business for a good while, I decided to take a break and relieve some stress (*cura*

animi) by having another look at the excellent account books of Carpinatius.”²¹ Cicero means “excellent” ironically, and by the suggestion that such activity could be relaxing he means a dry joke – though one meant to express in stark terms just how relentless his Sicilian investigations had been. We will return with Cicero to Carpinatius and his accounts later, but for the moment this “break” is interrupted by the announcement that Heraclius, a leading citizen of Syracuse, is at the door.

Cicero is asked to come at once to a meeting of the Syracusan senate already in progress; he complies, bringing with him his cousin, who had accompanied him to Sicily. The senate expresses to Cicero its dismay that he has not approached them for evidence and testimony to use against Verres. Cicero responds that Syracusans had not been among the Sicilian delegation that had petitioned him in Rome to undertake the prosecution and notes dryly that he could scarcely expect support from a body that met in the presence of a gilded statue of Verres himself, eliciting, according to Cicero, a groan of shame from all present. The senators then rise one by one to recount the wrongs they had endured at the hands of Verres. Among these is Heraclius, who describes how Verres had deprived him of his patrimony by bringing against him a lawsuit alleging that he had failed to fulfill a clause of his father’s will and by having the case tried in Heraclius’ absence by a sham jury. Verres pretended to bestow the confiscated property on the city, but in the speeches Cicero promises to show the jury “by means of documents and witnesses” (*tabulis . . . testibusque*) how the money came back to Verres “by the back door” (*per pseudothyrum*).²²

When the litany of complaints comes to an end, the Syracusans begin to produce hard evidence:

First they brought out for me civic records [*litterae publicae*] which they were conserving in the part of the treasury where they keep the emergency reserve [*in aerario sanctiore*]. In these, as they showed me, were registered [*perscripta*] all the stolen items I have told you about – more even than I have been able to list. They were registered in the following form: whereas this and that thing were missing from the temple of Minerva, or the temple of Jupiter, or the temple of Liber, etc. – the entries were divided according to the individuals who were responsible for guarding and protecting the items concerned – since they were providing the accounting required by law and now had to surrender the items they had received, they petitioned to be indemnified for such items as were missing. And it was written that all had been allowed to leave their posts without charge of wrongdoing, and that indemnity had been granted to all. I had these records put under the city seal and transferred into my possession [*quas ego litteras obsignandas publico signo deportandasque curavi*].²³

The Syracusans then take pains to explain to Cicero the circumstances of the *laudatio*, or formal eulogy, they had voted in Verres' honor shortly before Cicero's arrival in Sicily. First a letter had come from Verres requesting the honor, which he hoped would make subsequent complaints by the Syracusans awkward. But the request was ignored; when it was then made orally by some of Verres' friends in Syracuse, the speakers were shouted down. Only when the present governor, L. Metellus, intervened in favor of his predecessor were the Syracusans forced to comply.

As we have seen, however, the Syracusans were scrupulously attentive to detail and completeness in their civic records, and this left room for any careful reader of those records to discover their true feelings on the matter of Verres' *laudatio*, as they explain to Cicero.²⁴ Before discussing the *laudatio* of Verres the senate had decided to enact one in praise of Verres' predecessor Sextus Peducaeus, a measure Verres himself had earlier prevented them from undertaking. The Syracusans, Cicero learns, "have the custom of recording word-for-word the opinions expressed by the leading men of the city" – a great number of speeches in support of the *laudatio* of Peducaeus are therefore to be found included in the actual senatorial decree (*ipse senatus consultus*). The *laudatio* of Verres, by contrast, records the following: "Since no one rose to speak or express an opinion, the senators drew lots." A few thus were forced to speak for the measure, but they did so in such saccharine and hyperbolic terms "that everyone could understand that this was not a *laudatio* but rather a burlesque [*irrisio*]." Cicero receives the whole text for use as evidence.

Cicero and his cousin then leave the meeting, so that "in our absence they might decree whatever they wished." The senate forthwith votes that the pair should be made official guests of the city. "Not only did they then write out the text of the decree," Cicero later reports, "but they also made for us a presentation copy inscribed in bronze."²⁵ The senate then votes to repeal the *laudatio* it had decreed for Verres.

In the meantime, a former quaestor under Verres who has been present in the audience has slipped away to inform Metellus of these goings-on. The governor immediately intervenes and dissolves the meeting of the senate. The Syracusans protest with Cicero as their advocate: Metellus calls a hearing but gets up and leaves before Cicero can utter a word. The next morning, Cicero petitions the governor for permission to receive a copy of the previous day's decree by the Syracusan senate rescinding the *laudatio* of Verres. Metellus refuses, accusing Cicero of an *indignum facinus* in addressing a Greek senate in Greek.²⁶ Cicero responds with one of his favorite ploys: a shaming reference to the exemplary conduct in similar circumstances of a famous relative of the person he is addressing. Metellus is unmoved by this impertinence.

At this point, Cicero becomes desperate. He knows that the senate's vote to rescind the *laudatio* was a major stroke of fortune which, with Metellus now interfering, will never be repeated. He consults briefly with the Syracusans, and then lunges for the confiscated tablets recording the decree (*impetum in*

eas tabulas facio in quibus senatus consultum perscripserat).²⁷ A riot ensues (*nova turba atque rixa*), and a Syracusan friend of Verres named Theomnastus grabs the tablets first and refuses to let go. “Foaming at the mouth” – in his later description of the scene, Cicero lavishes insults on the man’s physical appearance – Theomnastus begins to shriek that Cicero has assaulted him. Still locked in struggle, the two make their way to the governor’s tribunal (*copulati in ius pervenimus*).

Cicero again demands that he be allowed to put the tablets under seal and take them away with him (*hic ego postulare coepi ut mihi tabulas obsignare ac deportare liceret*); as Theomnastus objects, Cicero begins to quote the law that gives him authority to confiscate any *tabulae* or *litterae* he sees fit (*ego legem recitare, omnium mihi tabularum et litterarum fieri potestatem*).²⁸ When Metellus tries to object that his dissolution of the senate has invalidated the decree, Cicero simply moves on to recite the penalty section of the law. The governor at last gives in, and the tablets are handed over to Cicero. The story has a bizarre footnote in Cicero’s version: Theomnastus, hoping to insinuate himself into Cicero’s good graces, later presents him with a booklet (*libellus*) listing Verres’ thefts at Syracuse. “But these,” Cicero prisses, “I had already come to know from the reports of other individuals.”

Cicero returns to his lodging, but not to rest on his laurels: two days earlier, the reader will recall, he had left unfinished his investigation of the accounts of Carpinatius. At the moment that Heraclius had come to fetch him, Cicero had been, he tells us, at the point of solving a major documentary riddle. Carpinatius was the provincial manager of a corporation based in Rome that managed the collection of rents on public pasture lands. Initially Carpinatius had encountered difficulties with the newly arrived governor Verres, prompting him to write letters of complaint to his superiors in Rome, but soon he and Verres had come to an agreement that would make a profit for all involved: the company would lend money to individuals who needed to pay the governor a bribe; Cicero even claims that the scheme became so elaborate that at times it was Verres who lent money to the company to lend in turn to his victims. Upon Verres’ departure from Sicily, Carpinatius arranged to have him met in Rome by the shareholders so that they might express their gratitude. From the chairman of the corporation Verres asked a favor in return: destroy any compromising or incriminating documents in the company archives regarding his person.²⁹ The corporation’s directors gladly complied (*statuunt illi atque decernunt ut eae litterae quibus existimatio C. Verris laederetur removerentur*). Later in the published speeches, Cicero will argue for the principle that where documents have been willfully destroyed to protect the defendant, the jury is obliged to believe whatever the prosecution alleges they contained. But while in the field collecting evidence, Cicero knew that he would need something concrete to make such allegations stick.

From years of experience defending *publicani*, Cicero tells us, he knew that it was the habit of financial administrators to keep a duplicate copy of documents relating to their tenure (*sciebam enim hanc magistrorum qui tabulas habent consuetudinem esse ut cum tabulas novo magistro traderent exempla litterarum ipsi habere non nollent*)³⁰ – such copies presumably might be used to defend a job well done or, alternatively, to incriminate other company members in the event of subsequent complaints about the administrator's conduct. Cicero therefore ascertained the name of the administrator for the year he believed most likely to involve illegalities and paid him an unannounced visit, catching him, Cicero reports, entirely by surprise. Cicero's search uncovered only two relevant documents – two small papyrus rolls (*libelli*) described as *parvi* and *pusilli*, containing transcriptions from wax tablets – but “however small they may seem to be,” they will enable a jury to reconstruct the tenor, if not the substance, of the missing company archive. (The specific wrongdoing revealed by the two texts was the evasion of export taxes by the company with Verres' collusion.) Word of Cicero's surprise search, ending with the sealing and confiscation of two incriminating documents, spread rapidly: all other individuals possessing copies of company documents quickly hid them (*his inventis libellis ceteri remoti et diligentius sunt reconditi*).³¹

Against the ancient counterpart of paper-shredding, Cicero had only this limited success, but although the company could destroy or hide miscellaneous documents, they scarcely could suppress their records of accounts received and payable (*sociorum tabulae accepti et expensi*) without tremendous scandal.³² At the moment that Heraclius comes to fetch him to the Syracusan senate, Cicero is poring over these (with the help, he tells us, of select *equites* from the Roman community in Syracuse), and to them he returns at the conclusion of the lively events described earlier. Cicero has noticed a great number of entries recording payments received from a certain Gaius Verrucius, son of Gaius, recorded thus: C. VERRVCIO C. F. (Gaio Verrucio Gai Filio). But each entry exhibited the same irregularity: the first five letters, C. VERR, were written normally, but the following letters appeared over an erasure in the wax (*sic tamen ut usque ad alterum R litterae constarent integrae, reliquae omnes essent in litura*).³³ His suspicion raised, Cicero asks Carpinatius who this “Verrucius” is, but the latter refuses to answer. “Since the account books of *publicani* are exempted by law from removal to Rome” (*quod lege excipiuntur tabulae publicanorum quo minus Romam deportentur* – Cicero's only reference to limits on his authority to collect evidence), Cicero must clear up this matter in Syracuse, and he accordingly gathers up the tablets and returns to the tribunal of the beleaguered Metellus, before whom he brings a legal action against Carpinatius to compel an answer.³⁴ Before a large audience, Cicero exposes the fraud: “Verrucius,” of course, is really Verres.

To circumvent the exemption of the tablets from exportation to Rome, Cicero has an exact copy (one might almost say “facsimile”) made on the spot:

There in the forum before a large crowd of onlookers I made a copy of the tablets, employing the ranking members of the assembly as copyists. Every letter and erasure, reproduced by facsimile, was transferred from the tablets to rolls of papyrus [*litterae lituraeque omnes assimilatae et expressae de tabulis in libros transferuntur*]. Every detail was reviewed and checked against the original [*haec omnia summa cura et diligentia recognita et collata*], and all was then sealed by extremely respected individuals.³⁵

In the published speeches, Cicero has this *descriptio* and *imago* of the tablets unrolled before the court “so that every living being may have a look not at the tracks [*vestigia*] but at the very lair [*ipsa cubilia*] of his rapacity.”³⁶ The metaphor is the set-up for an elaborate joke: Cicero asks the judges to look at “the final part of the name, that ‘Verrine’ tail sunk into the erasure as if into mud” – a reference to the unfortunate resemblance of Verres’ name to the Latin word for boar.³⁷

All of the above, therefore, represents what Cicero describes as a few days of a prosecutor’s intrepid trudging through a morass of written texts and documentary procedures that had become, he suggests, the very habitat of crime. These days may have been more colorful than most, but they scarcely can have been more laborious, given the massive quantity of evidence Cicero collected during his total of fifty or so days in Sicily. With the above portrait of the prosecutor–detective at work in mind, we turn in the next chapter to a more schematic account of the entire body of written evidence he collected.

MULTITUDO LITTERARUM

A catalogue of the written evidence against Verres

No account of the written texts referred to in the Verrines exists, despite their centrality to Cicero's case, probably because scholars have tended to underestimate their importance, as we saw in Chapter 2.¹ It seems opportune, therefore, to provide here a somewhat more extensive treatment of Cicero's written evidence than the demonstration of its quantity and complexity strictly requires. To some extent, this would have been necessary anyway, as the written texts referred to in the published speeches fall into three broad categories that are not always distinguishable: texts presented as evidence in the trial, texts used by Cicero to build his case but not presented as evidence, and texts referred to by Cicero in the speeches for rhetorical or illustrative purposes but not properly to be considered evidence. By including all of these in the following discussions, I have attempted to produce an exhaustive catalogue of written texts referred to, for whatever reason, in the Verrines, divided into categories that correspond as much as possible to those used by Cicero himself.

It is hoped that this corpus and the comments that accompany it will be useful not only to readers of the Verrines but also to scholars occupied more generally with the roles of the written word in the ancient world. For our present purposes, this expanded scope enables us to set a catalogue of the written texts used as evidence by Cicero against a broad backdrop of the documentary practices and other writing habits to which they belong. This will enable us to turn, at the end of this chapter, to a discussion of Roman attitudes toward writing – particularly to its documentary uses and abuses – as they are revealed by the Verrines, attitudes we must reconstruct if we are to understand why the written evidence Cicero presented was considered so damning.

For simplicity's sake, I have tended to refer to the published speeches of the second *actio* in terms that accept the fiction of their delivery – that is, I refer to what Cicero said rather than to what he pretended to have said. There will be reason to be more careful in the next chapter. With the same goal of simplicity in mind, I usually have accepted Cicero's charges as true, in order to avoid having to speak of Verres' conduct in terms of "allegations."

Litterae publicae

Arguably the star witnesses for the prosecution are the *litterae publicae*, “public records,” of various cities, lengthy extracts from which have been transcribed by Cicero for use as evidence. In addition to those of Syracuse, described in the previous chapter, Cicero refers to the *litterae publicae* of ten other Sicilian cities – Aetna, Agryium, Amestratus, Bidis, Halaesa, Hybla, Messana, Segesta, Thermae, Tyndaris² – as well as those of Miletus, through which Verres had passed while *legatus* in Asia,³ and in one exceptional case *litterae publicae* from the Aerarium of Rome itself.⁴ Apart from the score or so of instances in the Verrines and a handful in other Ciceronian texts,⁵ the expression *litterae publicae* is known from only one other source: a lengthy bronze inscription of an extortion law (*lex repetundarum*) probably belonging to the Gracchan period.⁶ This is scarcely a coincidence: the law in question regards the *quaestio de repetundis*, the standing extortion court before which Cicero brings his case against Verres. Cicero, of course, operates under a later law, belonging to the Sullan reforms, but the wording will have been substantially the same. The clause that refers to *litterae publicae* is that which gives the prosecutor power to present written evidence to the court: *sei qua tabulas, libros leiterasve pop<licas preivatasve pos>cere proferrequ<e volet*.⁷ The provision demonstrates the significance of written evidence in such cases already forty years or so before the prosecution of Verres. Why, however, should the term appear only in connection with the extortion court? Corruption by Roman officials was most likely to occur in the wealthy territories of the Greek and Hellenistic world, now, with the exception of Egypt, mostly under Roman control, including Greece proper, Asia, and, of course, Sicily. Both the language and the documentary habits of these places were Greek, and it seems very likely that *litterae publicae* translates a Greek technical term picked up by the Romans in their provinces, such as τὰ δημόσια γράμματα, already in use in the time of Demosthenes to designate the “public records” of Athens.⁸ In other contexts the Romans preferred the term *tabulae publicae* to designate civic records,⁹ and it is not difficult to guess at a few reasons why:

- 1 In the first place, *litterae* was a rather overworked word whose extended meanings already included “epistle” and, probably, “literature.”¹⁰ Even with the modifier *publicae*, Latin-speakers may have been anxious about the confusion potentially produced by a new technical meaning.
- 2 *Tabulae* was clearer in part also because it made explicit reference to the physical character of such records, which in Roman practice would have been set down principally in wax tablets, the Roman documentary medium *par excellence*. (It is also possible that *tabulae publicae* originally referred to records on *alba*.)¹¹ This would not necessarily have been the case in the Greek world: the one major surviving example of *litterae publicae* from Sicily is a lengthy stone inscription from Tauromenium

recording in minute detail the city's accounts, set up, probably, in the city's famously panoramic theater.¹² It seems unlikely that the *litterae publicae* kept by the Syracusan senate in the *aerarium sanctior* were as bulky as stone inscriptions (though their willingness to present Cicero and his cousin with a bronze copy of their decree, engraved on the spot, might, on the other hand, suggest a rather obsessive epigraphic habit!). Cicero also uses the word *tabulae* to refer to the Syracusan senate's records, and he once refers in a general way to the public records of Syracuse as *tabulae publicae*.¹³ Other instances of *tabulae publicae* refer not to the public records of Sicilian cities but rather to Verres' own records of his exercise of the office of praetor¹⁴ – here Rome is the “public” in question. In one instance Cicero uses both terms in close juxtaposition: a triumphant general has records of his booty copied out in *tabulas publicas ad aerarium* at Rome; Cicero has these read *ex litteris publicis* so that the jury may know their precision.¹⁵ The same document is indicated by both expressions, but the vivid reference to copying and the explicit context of the Roman Aerarium has suggested the material term *tabulae*, allowing Cicero then to use *litterae* in a more generic sense.¹⁶ But the ability to make such a distinction apparently was not important enough to justify the continued use of both terms.¹⁷

- 3 A final reason for the preference may have been the most important. Just as the tablet was the material vehicle *par excellence* of the Roman document, the financial record or account was the Roman document *par excellence*,¹⁸ and it is therefore not surprising to find *tabulae* frequently used by itself as a synonym for *rationes*. Roman public records likewise were mostly concerned with financial matters, whereas their Greek counterparts – the example from Syracuse suggests – may have been more diverse. Hence for the Romans “public records” were usually synonymous with “public accounts,” and thus could suitably be called *tabulae publicae*.

However explained, these linguistic shifts occurred in the broader context of the meeting of Rome's own expanding documentary culture, crucial to the maintenance of its growing overseas empire, with the already established and vast documentary culture of the Hellenistic world. In the case of Syracuse, we have seen just how meticulous a Greek city's public records could be. Sicilian cities, however, had to manage an additional layer of public record-keeping that was required by the system of agricultural tithes first instituted for the territory of Syracuse by the tyrant Hiero in the late third century BCE.¹⁹ The Romans' decision to maintain the structure of the *Lex Hieronica* and even the reference in its name to its founder may have been, as Cicero suggests,²⁰ an effort to give the Sicilians a sense of continuity despite the change of overlords, but it also allowed the Romans to access a ready-made institution of proven fairness, efficiency, and simplicity (a *lex aequissime*

scripta, in Cicero's phrase).²¹ It will be helpful to quote Geoffrey Rickman's summary of what can be learned from the Verrines about the system's function:

The system revealed in these speeches is that in each year the officials of each city-state, liable to the tithe, compiled a careful census of the farmers in their area, whether they were land-owners, or merely renters of private or public lands. The men so listed were obliged to declare [*profiteri*] the number of *iugera* under cultivation, the kind of crop, and the amount of seed planted. These records were open to inspection by the prospective collectors of the tithe [*decumani*]. In the light of the information in the records and their knowledge of the conditions in the area, weather, quality of soil, competence of the farmers, those competing for the contract to collect the tithes made their estimate of the likely crop and made a bid on the basis of the tithe that this would yield. The auction was held before the governor, and if his bid was successful, the *decumanus* then went round his district to make a contract [*pactio*] with each farmer as to the amount each should contribute. This *pactio*, once agreed, was made in triplicate and signed by both parties. One copy remained with the *decumanus*, another with the farmer, and the third was lodged with the city officials for the protection of both sides to the agreement. If, however, no agreement could be reached at that time, the amount to be taken by the *decumanus* was settled after the harvest at the threshing floor itself. There were severe penalties for both a *decumanus* who took more, and a farmer who surrendered less, than the legal due; according to an edict of Verres himself, eightfold restitution in the former case, and fourfold restitution in the latter.²²

"The Romans seem to have taken this system as their example, to have adopted its provisions, and to have applied it to the whole island . . ."²³ The adoption and expansion of Hiero's system in their new province of Sicily gave the Romans intensive lessons, by immersion, in the "public records" of the Greek world.

It was the *Lex Hieronica* that generated most of the *litterae publicae* used by Cicero as evidence, for it was the tithe-system that had been the principal object of Verres' corruption. As a result, twice as many references to *litterae publicae* appear in book 3 ("*De frumento*") as in any other book. In a particularly dramatic passage, Cicero explains that the law necessarily indicated the number of farmers registered year-by-year in each city, and that it was therefore possible to compare the numbers from before and after Verres' term:

Id adeo sciri facillime potest ex litteris publicis civitatum, propterea quod lege Hieronica numerus aratorum quotannis apud magistratus publice subscribitur.²⁴

Cicero then gives the shocking numbers: in some cases, fewer than half or even a third of the original farmers are left. Most of the other *litterae publicae* presented in book 3 bear more directly on specific extortion of money or grain by Verres; Cicero must painstakingly explain each discrepancy to the jury.

In addition to *litterae/tabulae publicae*, Cicero uses the expression *auctoritates publicae*, glossed on one occasion by Pseudo-Asconius as a synonym for *litterae publicae*.²⁵ Apart from its three appearances in the first *actio* of the Verrines, the expression occurs in no other text. In the first case it appears alone; in the second, it supplements *litterae*; in the third, it apparently replaces *litterae*. The second and third instances occur in grandiloquent phrases describing the mass of evidence Cicero is about to present. Its use, therefore, is probably for the rhetorical effect of referring to documents as “authorities,” rather than to express any technical meaning distinct from *litterae* or *tabulae*.

Occasionally with *litterae* Cicero substitutes for *publicae* the genitive *populorum*²⁶ or *civitatum*,²⁷ but with no apparent change in meaning. Rhetorical formulae for Cicero’s mass of evidence often produce the combination *publicae privataeque litterae* and the like.²⁸ Though the meaning of *litterae privatae* here is clear, it nowhere appears independently to designate “private records,” for which Cicero always prefers more specific terms.

Testimonium publicum

The other major class of “public” evidence used by Cicero is the *testimonium publicum* given before the court by various Sicilian cities.²⁹ It involved *legati*, representatives of the various civic bodies who chose to register official statements before the court in Rome, and the *mandata*, or “instructions,” they carried with them. It is not clear to what extent the oral testimony of the *legati* added to their written *mandata*, but it seems likely that in most cases a city that chose to accuse Verres would want to give its representative scripts to follow closely, especially as the testimony often involved detailed facts and figures. When Cicero says of such representatives, *veniunt cum mandatis, veniunt cum testimoniis*, he is probably being bombastically redundant, but the fact that the legates come *cum testimoniis publicis* suggests that they had more than just an idea of what they would say.³⁰ That Cicero often calls for a city’s *testimonium publicum* together with the reading of its *litterae publicae* is a matter of obvious convenience, but on at least one occasion he specifically tells us that the legates themselves carried the *litterae publicae* to Rome, and this may be true of other cases as well. Thus not all of Cicero’s written evidence from Sicily came from the period of his collection and sealing of documents there.

Read or improvised, all *testimonium publicum* (like all other oral testimony) acquired written form by its transcription by the court clerk.³¹

Accounts

In the Verrines Cicero largely reserves the term *rationes* to designate the official accounting presented by a Roman provincial magistrate to the Aerarium in Rome at the conclusion of his office, that is to say, to the Aerarium Saturni, the treasury and “state archives”³² located in the secure substructures of the temple of Saturn at the foot of the Capitoline Hill. The practice included – and may indeed have originated with – the recording of items of spoil brought back to Rome by a triumphant general. Pseudo-Asconius notes, “Such was the meticulousness of men of the past that they conserved a written record on tablets to be deposited in the Aerarium of everything anyone had carried away in triumph from a defeated province.”³³ Cicero gives occasion for the gloss by having an example of such triumphal *rationes* read to the jury – specifically, those of one of the jurors, Publius Servilius. The reason for the reading is to set up a pointed joke addressed to Verres: “I tell you that Servilius had his spoils for the Roman people more carefully noted and recorded than you did regarding what you stole for yourself.”³⁴

Three different sets of *rationes* by Verres are referred to by Cicero in the published speeches. The first is the account for Verres’ term as quaestor under Carbo,³⁵ which Cicero reads in full to the court – no great inconvenience, as they record only the sum received (*accepit viciens ducenta triginta quinque milia quadringentos x. et vii. nummos*), a lump sum of expenditures (*dedi stipendio, frumento, legatis, pro quaestore, cohorti praetoriae, HS mille sescenta triginta quinque milia quadringentos xvii. nummos*), and the remaining difference, recorded as having been left in the town of Ariminum (*reliqui Arimini HS sescenta milia*).³⁶ Cicero first rails against the shocking *brevitas* of these *rationes*, about which he later remarks to the jury, “You have heard the account of his quaestorship, delivered in three short verses.”³⁷ He then suggests that the third line records Ariminum as the town where Verres had left his balance merely because it was immediately thereafter seized and plundered by Sulla; the sum, Cicero implies, had already been pocketed by Verres.³⁸

The second set of Verrine *rationes* is that pertaining to his terms as *legatus* and then *legatus pro quaestore* under Cn. Dolabella in Cilicia (80–79 BCE). Verres had not submitted these to the Aerarium until after the trial and conviction of Dolabella for extortion. Cicero suggests that Verres was waiting for the political heat over Dolabella’s corruption to dissipate:

He does not dare submit his *rationes* to the Aerarium until after Dolabella’s condemnation. He requests and receives an extension from the senate, with the excuse that his account books [*tabulae*] had been seized as evidence [*obsignatae*] by the prosecutors of

Dolabella – as if he had no way to make copies! [*proinde quasi exscribendi potestatem non haberet*].³⁹

Dolabella's prosecution had used discrepancies between the accounts of Dolabella and those of Verres to seal its case against the former. Cicero does what Dolabella's defense apparently did not do and subpoenas the account books of people named in Verres' own books. The collation of this material must have been quite laborious, but Cicero has been painstaking: *aliqua ex particula investigabamus*, "I've been checking a few details," he understates. In the published speeches, Cicero first has the *lites aestimatae*, the assessment of damages declared against Dolabella, read aloud to the court; this records the precise amounts of the discrepancies between his and Verres' accounts. Then he strikes home with what he has discovered:

O you stupid, foolish man, when you were making up your account books and when you wanted to evade any criminal connection to those irregular sums of money, did you really think that you had done enough to escape any suspicion if you did not record the fact that payment had been made to those people to whom you were entrusting the money, and if you did not set down in your accounts any transaction, even though the Curtii in their accounts report payment received from you in so many transactions? What good did it do you not to report that you had made payments to them? Or did you really think that you could make a defense on the basis of *your* account books alone?⁴⁰

The Curtii in question are two private individuals (Quintus and Gnaeus Postumus Curtius) who had had dealings with Verres during his term in office. Cicero's suggestion that Verres is surprised by this comparison, and the fact that no similar one was attempted by Dolabella's defense, suggests that the checking of public *rationes* against the private accounts of persons connected to the magistrate in question was a highly uncommon, perhaps wholly novel maneuver by a prosecutor. Cicero is visibly proud of the fact that his own care and initiative led him, without the assistance of any informant (*nullo duce*), to discover the discrepancies.⁴¹

The third set of *rationes* are those we might expect to have taken center stage at the trial: the official accounts of Verres' three-year term as propraetor in Sicily. Instead, they do not even appear, because Verres has not yet submitted them to the Aerarium. They are mentioned in a single passage in which Cicero attacks Verres for the delay and for the excuse he used to obtain an extension from the senate:

He stated before the senate that he was waiting for his quaestor – as if, although a quaestor can submit his *ratio* in the absence of his

praetor (as you and everyone else have done, Hortensius!), a praetor cannot do the same without his quaestor. He stated that Dolabella had been granted the same extension. The senators liked the precedent more than the pretext; they voted their approval. But the quaestors arrived long ago: why have you not submitted the accounts?⁴²

That Cicero was forced to build his extortion case without the central documents relating to Verres' financial affairs as Sicilian governor is an astonishing fact strangely ignored by commentators on the case. It probably is to be reckoned among the delaying tactics devised by Verres and Hortensius, who may have expected no prosecutor foolhardy enough to bring a case without them. The fact that the senate did not demand the *rationes* in time for the trial confirms its support of Verres up to the last minute – that is, Verres was not quietly being set up by the senate as a scapegoat to be handed over to Cicero. That Cicero mentions the suppression of the *rationes* only once doubtless reflects the awkwardness of his relationship to the senate as a result of the case, and the fact that he even goes so far as to justify the senate's decision suggests that this awkwardness presented genuine perils: too harsh a complaint about the missing *rationes* would be to question the motives of the decree of the senate. Cicero's silence is to be compared with his delicate pose on the corruption of the senatorial extortion court: the court must convict Verres in order to reveal that it is *not* corrupt.⁴³

Cicero is unencumbered by such scruples on the matter of Verres' *private* account books, also absent for the crucial period in Sicily. Cicero gives free rein to his irony on the matter of the presumed destruction or concealment of Verres' own *tabulae*. When he imagines the defense claiming that Verres bought the statues and paintings he was alleged to have stolen, Cicero responds:

I have received both his and his father's account books: his father's, for as long as he lived, yours, for as long as you say you have kept accounts. For in this affair, judges, we find this novelty. We have heard of people who have never kept accounts . . . We have heard of others who did not keep accounts from the beginning, but who began to keep them only at a certain point in time . . . But this is novel and amusing: when asked for particular accounts of his, he told us that he had kept them up to the consulship of M. Terentius and C. Cassius, but that afterwards he had given up the practice. Just what this means we shall consider later.⁴⁴

Here the word for "accounts" is *tabulae*; as mentioned above, Cicero uses *rationes* principally for public accounts submitted by a magistrate to the

Aerarium. For this passage Pseudo-Asconius provides an interesting note on *tabulae*:

That is, of moneys received [*acceptarum pecuniarum*]. In these one finds recorded “from such-and-such a person” [*AB EO*] and “I received such-and-such amount” [*ACCEPI*]. The custom was for every individual to set down a day-by-day household account [*domestica ratio*] for his entire life, in which would appear what he had laid aside from his revenues, from interest charged, from profit, on what day, and any expenses or losses.⁴⁵ But once everyone began to be convicted by their own *tabulae* as a result of the confiscation of the records of accused persons [*obsignandis litteris reorum*], this entire ancient practice came to an end, even to the present day.⁴⁶

The gloss – to the extent that it can be believed – combines with Verres’ suppression of his private accounts to reveal a web of connections between money, crime, writing, and law that is strikingly modern: the growing complexity of Rome’s economy created both heightened need for careful records and increased opportunities for crime – and these two factors meant that, even as “white-collar” thieves proliferated, it was increasingly possible to track them down by following the “paper trail” they had left behind.

We already have seen Cicero stalking Verres’ *vestigia* through the account books of the company of Carpinatius. For the missing Sicilian account books of Verres, Cicero pursues the same strategy he had used for the deceptive *rationes* submitted by Verres for his term under Dolabella: he searches out transactions involving Verres in the accounts of others. The alteration of the relevant entries in the company accounts of Carpinatius and the company’s destruction of other *litterae* reveal that, even before the prosecution, Verres was aware that others’ records left him vulnerable. But Verres could not arrange to have himself erased from the *tabulae* of everyone with whom he had dealt. Cicero presents as evidence against him the private account books of three individuals.⁴⁷ In the case of one, he makes a virtue of the necessity of reconstructing Verres’ accounts by making pointed claims about the moral character of the person whose accounts he must use for the reconstruction:

[Q. Tadius] brought forth the accounts with which he demonstrated that he had paid the money. Should we not believe the accounts and testimony even of Tadius? Why proceed with the case? What would it take to allow everyone to commit every crime and offense if not this: not to trust the testimony of very honest people and the account books of upstanding men?⁴⁸

We will return to the subject of trustworthy people and their accounts in Chapter 4.

Cicero also uses the *litterae publicae* of the Sicilian cities to reconstruct Verres' accounts, both private and public. In one case, that of the city of Halaesa, Cicero refers to a Sicilian city's *rationes*.⁴⁹ This isolated use of *rationes* for non-Roman public accounts is a natural enough extension of its technical use elsewhere by Cicero, but it may also be influenced by his decision to read the accounts of Halaesa as if each entry corresponded to what would appear in Verres' *rationes* for the Aerarium in Rome. When Cicero comes to an entry (*nomen*) for a fee charged by Verres for "wax-money" (*cerarium*) – an apparent document tax – he exclaims, "What does this entry have to do with the accounts of a Roman magistracy?" (*quo modo hoc nomen ad rationes magistratus*).⁵⁰

Cicero's most ambitious reconstruction of *rationes* regards the tithe-sales for Aetna and Leontini. Here not only are Verres' accounts missing, but, more importantly, so too are those of his right-hand man Apronius, who Cicero claims acted in the governor's stead in the affair.

How then, gentlemen of the jury, am I going to manage to find out how much profit was made? Not by consulting the accounts [*tabulae*] of Apronius: these I was unable to find when I conducted a search for them [*cum conquirerem*], and when I had him summoned before the magistrate I got from him a denial that he ever had kept such accounts. Assuming he was lying, why did he remove them, unless they were going to be damaging for you? If he really never kept any records at all, isn't that proof enough that he wasn't conducting his own business?⁵¹

Cicero vows not to be thwarted by the missing accounts: "I am about to snare you so completely in public and private farming-contracts and documents that you will discover that you were no more thorough in committing thefts than I have been in detecting them."⁵² Cicero's figure-by-figure exposé of the irregularities is lengthy and laborious.⁵³ It is precisely in anticipation of this kind of argument that he has begged the jury's patience and attention at the beginning of book 3.⁵⁴

In book 4 Cicero uses a claim by the defense that Verres had bought items Cicero alleged were stolen as a pretext for a memorable tirade about Verres' missing accounts, worth quoting in full:

But I've been straying far from the point by saying so much about your purchases and asking whether you bought something or not and how and for how much – when I can settle the matter in a word: produce me a *written record* [*ede mihi scriptum*] of the silver you purchased in Sicily, stating from whom and at what price you

bought it. Well, then? I should not even be asking *you* for such documents [*litterae*] – I ought to have your accounts [*tabulae*] and be presenting them to the court myself. But you deny that you kept accounts for some of the years in question. Devise something to satisfy my request about the silver, then we'll see about forgoing the rest. "I don't have a written record nor can I provide one" [*non scriptum habeo nec possum edere*]. Your house was full of lovely statues even before your praetorship, many others were set up in your villas, many left with friends, many given away to others. Your accounts show none of them to have been bought. All the silver has been stolen from Sicily; nothing is left which anyone would wish to claim. A crooked defense is devised: the praetor bought all that silver, but that fact cannot be demonstrated by his accounts. If in those accounts you do produce there is no written record of how you came to possess what you have, and if you produce no accounts whatsoever for the period in which you say you bought the most, is not your conviction required both by the accounts you do produce and by those you do not?⁵⁵

Cicero here employs the same reversal of the *onus probandi* he had used regarding the missing records of Carpinatius: where the defendant has destroyed documents, the jury is obliged to suppose the worst regarding their contents.

Correspondence

Cicero also tracks Verres along crisscrossing paths of correspondence both public and private. In most instances Cicero knows of a letter's existence and can relate its purpose and general content but does not have the letter itself to present as evidence in court. Ten such letters or sets of letters apparently not in Cicero's possession are mentioned by him as having bearing on the case:

- 1 Cicero alleges that Verres put an act of extortion in motion on his first day in Sicily by sending a letter from Messina to Halaesa, and he even suggests that Verres must have written the letter in Italy before crossing the strait, so that he might send it as soon as he stepped off the ship and into the province of his propraetorial jurisdiction.⁵⁶
- 2 The victim plotted against in (1) was interceded for in a letter written by none other than Hortensius, whom Cicero cannot call as a witness because of the *exceptio legis* accorded to him as defense attorney, an exemption that presumably applied as well to his archives, which might have contained a copy.⁵⁷

- 3 and 4 Two letters of intercession for victims of Verrine injustice were written by Verres' own father.⁵⁸
- 5 The censor Cn. Lentulus wrote Verres a letter interceding on behalf of yet another victim.⁵⁹
- 6 A letter by Verres to the citizens of Sicily regarding tithes has been read as evidence by the defense; to this Cicero would then have been allowed access.⁶⁰
- 7 Cicero seems to have very precise knowledge of the contents of a letter from Verres to Hortensius regarding the tithes.⁶¹
- 8 Cicero on several occasions refers angrily to a letter (or letters) sent by Verres to Metellus while Cicero was in Sicily collecting evidence; its result was to turn the governor, previously supportive, into a major obstacle. A cryptic reference to the letter as *tabulae tributariae* may suggest a bribe was promised, but the phrase has puzzled commentators.⁶²
- 9 As we have seen, Verres sent a letter to the Syracusan senate asking it to vote him a *laudatio* a few days before Cicero arrived to collect evidence.⁶³
- 10 A final letter, to one of Verres' agents, was important not for its content but for its seal, which so captured Verres' fancy that he had the ring of the sender confiscated.⁶⁴

We may note here that on one occasion Cicero rebukes Verres for *not* writing a letter – to test the claim of Roman citizenship made by a man he had sentenced to death.⁶⁵ Finally, mentioned in the speeches but not appearing as evidence are Cicero's own "letters of recommendation" from M.' Glabrio, president of the extortion court.⁶⁶

Far more dramatic than any of the above, however, are the four letters Cicero has in his possession and presents to the court as evidence. Two are official letters from Metellus. The first is an open letter to the *civitates* of Sicily, entreating their farmers to plow their land – the implication being, of course, that they had been so devastated and demoralized by Verres' term that they had ceased to do so.⁶⁷ Metellus goes on to promise to abide by the code of Hiero, a clear suggestion that Verres had not. The second letter – a report by Metellus to the consuls, the praetor, and the city quaestors – contains further inadvertent confessions of Verres' corruption. In the published speeches Cicero latches onto one phrase in particular: Metellus' reference to the "surviving farmers."⁶⁸ "What war, what catastrophe did they survive?" cries Cicero. Of course, Cicero could not have had time in the evidence phase of the trial for the elaborate rhetorical frame in which he presents the letter in the published speeches, but his build-up to the reading of the letter provides important insight into just what the power of this piece of evidence was. Cicero pretends to have come to an impasse, his written

and oral evidence unable, despite its staggering abundance, to convince the jury.

What more do you want? You can't be waiting for L. Metellus, who used his office to frighten away many witnesses against Verres, and who still is away in Sicily, to give testimony about Verres' wicked, reckless, depraved character. I think not! But as Verres' successor, someone will say, he is especially informed. True, but friendship gets in the way. But he has an obligation to inform you on the present state of the province. He should, but nothing compels him to do so. Is anyone expecting testimony against Verres from L. Metellus? No one is. Is anyone demanding that he testify? Not that I know of. Well, then, if I demonstrate that everything I have said is true by means of testimony given by L. Metellus *in a letter*, what will you say then?⁶⁹

Cicero builds this elaborate introduction out of a universal trope about letter-writing: a letter allows an absent person to speak. But in this case, Metellus' absence is not only physical; equally lacking is his willingness to testify. Cicero has the letter read a section at a time, each line answering questions he has just posed to his absent and reluctant witness.

Cicero employs a similar device on two other occasions. The first involves a letter written by Verres' freedman assistant Timarchides to Verres' occasional partner in crime Apronius.⁷⁰ Cicero reads this letter too line-by-line, but here he does not pretend to address questions directly to its sender, but rather comments in asides to the jury – a structure which gives him a suitable distance from which to express his outrage not only at the letter's contents but also at its insolent tone, intolerable, Cicero suggests, from a mere freedman. The second occasion is the reading of the letter to Carpinatius from Vettius, one of the *magistri* of their company, threatening to be on hand when Verres submits his *rationes* to the Aerarium.⁷¹ Cicero in the published speech takes pains to emphasize Vettius' personal ties to Verres: *Vettius tuus familiarissimus, Vettius tuus affinis, cuius sororem habes in matrimonio, tuae frater uxoris, Vettius frater tui quaestoris*.⁷² These ties make Vettius' criticism all the more damaging, but they also may reveal why Vettius himself is not called as a witness: Vettius might be harsh in a letter, but he probably would not have testified in court against a friend and kinsman, especially since Verres had ultimately generated profit for the company. The written evidence of the letter allows Cicero to break down these several codes of silence.

Cicero provides interesting information about how he came to acquire these last two letters. The first he had found "in the house of Apronius at Syracuse when we came to conduct a search for documentary material" (*in aedibus Syracusis Apronii cum litteras conquireremus*).⁷³ Cicero has a copy of the second letter from two sources: the file of received letters he searched in the house

of Carpinatius in Syracuse, and the file of sent letters he searched in the house of L. Tullius, another *magister* of the company, at Rome.⁷⁴ These “files” are referred to by Cicero as *libri* and presumably are papyrus rolls into which copies of correspondence were entered upon receipt or dispatch, the letters themselves being on tablets.⁷⁵ Another letter, written by Verres to the governor of Asia, will be considered below in the section on records of legal proceedings.

Inscriptions

The best way to begin a discussion of “Cicero epigrapher” is with a well-known scene in Sicily described not in the Verrines but in the Tusculan Disputations. Cicero proudly recounts how, on a visit to Syracuse during his quaestorship, he sought out and found the inscribed tomb of Archimedes, proving that a man of Arpinum could know of Syracuse what the Syracusans did not.⁷⁶ For the rhetorical purposes of the Verrines, however, the Syracusans are experts on their city’s past who, as tour guides in the aftermath of Verres, “have inverted the logic of their tours, for previously they pointed out everywhere things to see; now they indicate the places from which everything has been stolen.”⁷⁷

All of Sicily had suffered similar depredation of its major tourist attractions. The response of the Segestans to their own particular loss is singled out by Cicero for special attention.⁷⁸ The city’s greatest treasure had been an ancient bronze statue of Diana, once carried off by the Carthaginians but restored after the Third Punic War by Publius Scipio Africanus, in whose honor the Segestans had reerected the statue on an inscribed base recording its restitution by him.⁷⁹ “It was worshipped by the citizens, visited by all travelers; when I was quaestor, it was the very first thing they took me to see.”⁸⁰ Verres had great difficulty stealing it, and unable to convince any Segestans to help him remove it from its base, he had to bring in workers from Lilybaeum. “When the city had been made victim of his crime and the base laid bare, with the name of P. Africanus engraved on it, the affair continued to provoke the indignation and resentment of everyone . . .”⁸¹ Bodiless but not mute, the monument now had to be erased altogether: “When information was brought to him regarding the base and its text [*de basi ac litteris*], he decided that people would forget about the whole business if he removed as well the base that was acting as an *index* of his crime.”⁸²

Index is a pun: metaphorically the inscription is an “informer” of Verres’ crime, but *index* also is used for the identifying inscription accompanying a work of art; the inscription thus points out the missing statue in the space above at the same time as it fingers Verres as the culprit. Verres forces the Segestans to hire someone to remove the base; Cicero had the text of the contract, recorded in the *litterae publicae* of Segesta, read as evidence in the first *actio*,⁸³ but he does not comment further on it in the published speech.

Cicero instead begins a lengthy excursus in which he singles out members of the jury as having a special responsibility to safeguard the *monumenta* of their predecessors; especially pointed are the words he addresses to a descendant of Africanus, himself named Publius Scipio, among them. Cicero's rhetorical emphasis is on the name: Verres has had the monument, set up "in the name of this commander" (*eius imperatoris nomine positum ac dedicatum*), dismantled and "the name of Publius Scipio utterly obliterated and removed" (*nomenque omnino P. Scipionis delendum tollendumque*).⁸⁴ Cicero pretends that only he himself, a lowly prosecutor, is left to defend the memory of Africanus, and he calls for the world to ignore momentarily the trial and hear instead his urgent plea: "Let the base of P. Scipio be restored! Let the name of the unbeaten commander be inscribed on it [*nomen invicti imperatoris indicatur*]! Let the beautiful statue he took back from Carthage be placed again upon it!"⁸⁵ Another inscription recording Africanus appears in Cicero's account of thefts from the sanctuary of the Magna Mater near Engyion, where Verres "left only the tracks [*vestigia*] of his sacrilege and the name [*nomen*] of P. Scipio."⁸⁶ This is the second occasion on which Cicero juxtaposes *nomen* and *vestigia*: in the first, the "tracks" had been left in Carpinatius' account books by Verres own (though camouflaged) name. A moral is evident in the way Cicero tells these stories: influential Romans inevitably leave their names behind them wherever they go – great men leave their names as *monumenta* of their glorious deeds, whereas men like Verres leave their names only as *vestigia* of their crimes.

The statues of himself set up by Verres all over Sicily are scarcely monuments comparable to those of Africanus but are instead markers of the locations of his most flagrant abuses of power. Many were overturned upon his departure.⁸⁷ The demolition of a monument to Verres by the Tauromenians is particularly telling for the way it inverts the story of Verres' destruction of the Segestan monument to Africanus. The Tauromenians overthrow the statue of Verres but decide to leave its inscribed base intact in their forum, "for they thought it would damage him more for men to know that the Tauromenians had overturned his statue than for them to suppose that none had ever been erected."⁸⁸ Cicero mentions several other statues of Verres on inscribed bases, both in Sicily and in Rome, and suggests, naturally, that they were erected by the Sicilians under duress.⁸⁹ But Cicero also uses the monuments to call his opponent's bluff: Verres cannot continue to claim that he is being slandered out of hatred by the same Sicilian farmers who – Cicero pretends to read the dedicatory inscription at a distance – set up a gilt equestrian statue of him near the temple of Vulcan.⁹⁰ Verres is likewise trapped by another statue-base "inscribed in enormous letters [*maximis litteris incisum*] GIVEN BY THE COMBINED PEOPLE OF SICILY."⁹¹

In stark contrast to the hollow praise given to Verres in inscriptions that the Sicilians, according to Cicero, were forced to dedicate is the warm and spontaneous laudatory inscription they set up in honor of one of their own,

Sthenius of Thermae, robbed by Verres. Can the Sthenius who fell victim to Verres really be the same man, Cicero asks, “concerning whose services to the citizens of Thermae and to the Sicilians in general there was a bronze tablet hung up in the senate house in Thermae, in which a text had been written and inscribed publicly recording his benefactions [*fuit aenea tabula fixa Thermis in curia, in quae publice erat de huius beneficiis scriptum et incisum*]?”⁹² Verres had the tablet taken down, but Cicero has found it and brought it to Rome as evidence: “that tablet, once ripped down by your order, but now brought to Rome by me, so that all might become acquainted with the honors and greatness he achieved among his own people.”⁹³ The story of Sthenius has a footnote: out of his loot Verres set up a silver statue of Cupid at Eryx still inscribed with Sthenius’ name.⁹⁴ After a few jokes on “cupidity” and the like, Cicero counts the statue among the *notae* and *vestigia* of Verres’ crimes;⁹⁵ the addition of *notae* to *vestigia*, which we have seen earlier, adds vividness to the metaphor: Cicero tracks Verres principally by *reading* the marks he has left behind.

A final variation on the theme of inscribed monuments produces no evidence for direct use in court but sets the stage for the revelation of an especially sensational Verrine theft.⁹⁶ In an ancient shrine of Juno on the island of Melita hung two enormous ivory tusks. The fleet of King Masinissa of Numidia had once put into port there, and the commander of the fleet had seized the tusks to carry back to Africa as a gift for the king. Though pleased, the king had them conveyed back to the temple, after “it was written on them in Punic characters that Masinissa had received them unwittingly and, the full story known, had seen to it they were brought back and put in their former place.” Verres has no such scruples and despoils the temple of the tusks and all its other ivory objects.

The often dizzying array of written texts that appear in the Verrines is in an almost literal way anchored by the worthy *monumenta* considered above: the inscribed statue base of Africanus left in place by the Segestans, the bronze tablet honoring Sthenius torn down by Verres but found by Cicero and carried to Rome as weighty evidence, the ivory tusks that crossed the sea but which the piety of a good king caused to return to the exact spot they had left. Cicero’s relentless presentation of documents regarding corruption, some of which documents are themselves corrupt, risks making writing itself seem hopelessly tangled in duplicity, undermining in a general way the credibility and authority of his whole body of written evidence. Against this risk, Africanus and Masinissa provide venerable examples of honest men who used writing in the course of honest acts. Significantly, both those acts concern the restitution of stolen property, and they thus are complemented by the example of Sthenius, himself robbed bare by Verres. The precise nature of this contrast is worth keeping in mind. Nowhere does Cicero suggest that Verres’ immersion in written texts is in itself a symptom of corruption: rather, in the

proper order of things, writing serves to prevent the indiscriminate movement of property; Verres perverts this role by using writing instead to perpetrate theft. The diversity of Cicero's counter-examples – a Roman, a Greek, and a Numidian – indicates that Verres' perversion is not only un-Roman but more generally uncivilized.⁹⁷

Records of legal proceedings

Cicero has occasion to refer to court records from proceedings in each of Verres' principal spheres of activity: Asia, Rome, and Sicily. In the case of Rome, Cicero mentions, without giving particulars, the frequency with which persons who had received a verdict from Verres as urban praetor exercised their right to appeal to a magistrate of equal or higher rank by petitioning the other praetor: "And so L. Piso filled numerous *codices* with the affairs in which he intervened in such a way as to hand down a decision different from that proclaimed by Verres."⁹⁸ Elsewhere Cicero alludes obliquely to a scandal involving Verres' own praetorial register: "I will say nothing about that 'Junian *subsortitio*.' Why indeed should I? What would I dare say against the *tabulae* you produced in court?"⁹⁹ These same *tabulae* are referred to as a *codex* by Cicero in the *Pro Cluentio*, where a few references enable reconstruction of the scandal, which included fraudulent erasure and sealing of his own *codex* by Verres as praetor.¹⁰⁰

Court records from Asia and Sicily, by contrast, are used directly by Cicero as evidence. From Asia, Cicero has a copy of Verres' own testimony (*testimonium*) before C. Nero, governor of the province of Asia, regarding the execution of a father and son of the city of Lampsacum who had killed one of Verres' lictors during Verres' attempted abduction of their daughter and sister.¹⁰¹ Cicero has the testimony read as well as a letter from Verres to Nero.¹⁰² It is not clear whether either or both of these were available to Cicero from a public archive in Rome (perhaps the Aerarium itself, to which provincial magistrates submitted their *rationes*, but see below for another possibility), or whether he obtained them from a private collection of documents pertaining to his office retained by Nero himself.

A suggestion that records of proceedings in provincial courts were readily available in Rome is to be had in Cicero's commentary on a case from Verres' term in Sicily. Cicero not only has Verres' own records for the sham trial of Sthenius, but also can demand that the defense produce records from any other praetorship that contain a parallel for Verres' imposition in this case of a Roman attorney on a Sicilian citizen:

Omnium praetorum litteras qui ante te fuerunt profer, explica: si unum inveneris, ego hoc tibi, quem ad modum in tabulis scriptum habes, ita gestum esse concedam.

Bring out the records of all the praetors who preceded you and unroll them. If you find one instance, I shall concede to you that this matter was handled as you have it written in your tablets.¹⁰³

Of course, Cicero's vividness may be rhetorical and need not imply a centralized archive at hand. But Cicero's wording contains an interesting feature: Verres' *tabulae* – the actual tablets in which the case was registered on the spot in Sicily – are to be compared with the *litterae* of past praetors which he must “unroll” (*explica*), a verb used almost exclusively of papyrus rolls. If there was an archive, we might expect precisely this: the copying of records from bulky wax tablets into compact rolls for storage. That space for the storage of documents in the Aerarium was tight is probably indicated by the construction of another building for document storage, the Tabularium, in 78 BCE¹⁰⁴ – another possible location for any archive to which Cicero may be referring.¹⁰⁵

Edicts

A praetor's pronouncements on specific subjects were known as *edicta*; the body of these was known collectively as his *edictum perpetuum*; the relative continuity of this body of pronouncements from praetor to praetor led to its being called an *edictum tralaticium*.¹⁰⁶ The result was that a praetor's *edictum*, though all its individual clauses¹⁰⁷ had in origin arisen from *edicta* pronounced case by case, was supposed to have a general force applicable to new cases for which a close precedent could already be found among the *edictum*'s clauses.

Cicero attacks Verres for his indiscriminate proclamation of new and sometimes “spur-of-the-moment” *edicta*;¹⁰⁸ for his alteration of established clauses in the *edictum tralaticium*;¹⁰⁹ and above all for his introduction of vague language and *ad hominem* provisions into his *edictum* to enable premeditated theft through sham legal proceedings. For this last category, Cicero's tactic is what we might call “close reading”: under close interrogation the legalese of Verres' clauses eventually reveals his true motives – though in some clauses corruption is evident even without scrutiny, as in the one which declares that “whatever amount in tithes the collector declares as due to him by a farmer, let the farmer turn over that amount to the collector.”¹¹⁰

As was customary, Verres promulgated one *edictum* as praetor in Rome and another as propraetor in Sicily, with the core of the latter borrowed from the former.¹¹¹ At Rome, the praetor set up his *edictum* on an *album* along with his list of procedural *formulae*;¹¹² either this *album* survived from Verres' urban praetorship or Cicero consulted a copy. Verres' Sicilian *edictum* is available only on his own bound tablets, to which Cicero on one occasion refers directly:

I would not dare to affirm this, even though all Sicily should declare it to be so, if I could not read aloud these edicts word for word from his own tablets [*si haec edicta non ex ipsius tabulis totidem verbis recitare possem*]. Give them, please, to the clerk, so that he can read aloud the part of the edict about the declaration of property.¹¹³

In the published speech, Cicero imagines Verres responding by shaking his head to indicate that the clerk is reading out of context; Cicero obliges him by having the clerk read further.

Wills

Three wills (*testamenta*) are discussed by Cicero in connection with the charges against Verres, though it is not clear that he presents the actual wills themselves as evidence.¹¹⁴ In each case, Verres has exploited a technicality to argue that the deceased's wishes have not been carried out and thereby to deprive the rightful heir of his inheritance.¹¹⁵

Treaties

Three Sicilian cities – Messina, Tauromenium, Netum – enjoyed higher status as *civitates foederatae* as a result of earlier alliances with Rome. Each enjoyed relations with Rome that technically were between equals, under the stipulations of a mutually sworn *foedus* or treaty. Verres apparently violated terms of the *foedera* of Messina and Tauromenium (in the first case, by refusing a ship due under the treaty; in the second, by demanding a ship when none was due). Cicero consequently has the two *foedera*, or at least the two relevant clauses, read as evidence.¹¹⁶

“Speech” of a ship’s captain

One extraordinary written text presented by Cicero merits individual attention. Several ship’s captains were sentenced to death by Verres for a naval disaster against the pirates that was, as Cicero explains at great length, wholly Verres’ own fault. Among these was a certain Furius of Heraclia:

With death staring him in the face, while day and night his mother sat by him in prison weeping, he set down in writing a defense of his own conduct [*defensionem causae suae scripsit*]. By now there is no one in Sicily who does not have a copy, who has not read it, who has not had your corruption and cruelty seared into their memory by that speech [*ex illa oratione*].¹¹⁷

The speech helped to ensure that the man's martyrdom transformed him from a local favorite into a Sicilian hero (*homo, quam diu vixit, non domi suae solum, post mortem tota Sicilia clarus et nobilis*).¹¹⁸ Furius set out in detail the inadequacies in the equipage of his ship, the responsibility for which was Verres'. But the *defensio* was not merely an exposition of facts but also an aggressively rhetorical attack on Verres' character: Cicero quotes from it a line which, he says, Furius also shouted at the trial, in which Furius suggests that the kisses of a whore matter more to Verres than do the tears of a mother pleading for her son's life.¹¹⁹ Cicero then loosely quotes a series of remarkable assertions made by Furius about the effect his speech will have:

Furthermore, I see that he said one thing¹²⁰ which – if the opinion of the Roman people regarding you is correct, gentlemen – he did not falsely predict of you in the very hour of his death: namely, that Verres cannot snuff us¹²¹ out by killing witnesses, that his testimony would carry greater weight with the jury if he spoke from the underworld than if he were before the court as a living witness . . .

The direct way in which Furius' speech incriminates Verres in the second person makes it exceptional among the texts Cicero presents to the court, but in another sense it is starkly symbolic of the very reversal that characterizes Cicero's entire case: written evidence takes the place of living witnesses. As paraphrased by Cicero, Furius dramatically punctuates the lengthy parade of documents thus far laid before the court: not even by killing potential witnesses against him can Verres erase the texts that testify to his crimes. The symbolic importance of this moment is underscored by Cicero's sudden invocation of the *populus Romanus*, whose importance to the case will be considered more fully in the next chapter.

Miscellaneous

A few other written texts referred to in connection with the case may be mentioned here.

- Cicero has a decree read directly from Verres' own *commentarius*, perhaps a notebook of minutes of functions in which he participated directly.¹²² Verres sued Heraclius to rob him of his patrimony; Cicero translates the Greek formula (*δίκην γράφειν τινί*) which expresses the idea "to sue" in terms of the writing down of the complaint: *scribitur Heraclio dica*.
- Another Greek practice is alluded to in two mentions of *syngraphae*, promissory notes in which each party holds a duplicate copy.¹²³
- For at least two of his "purchases" of art, Verres has a receipt (*litterae* or *tabulae*), but Cicero mocks the price and the willingness of the vendors.¹²⁴

- A written order by Verres is referred to as *litterae*, probably because it took the form of a letter.¹²⁵
- A written account of an “auction” conducted by Verres is read to the Syracusan senate – one entry (*nomen*) provokes a general uproar.¹²⁶
- Cicero recounts an incident in which Verres corrupted a sortition by having his man’s name written on every leaf.¹²⁷
- Officials of a Sicilian city give a report to their senate on misconduct of the governor: this *renuntiatio* is doubtless oral, but it acquires written form by being entered immediately into the city’s *litterae publicae*, as prescribed by local law.¹²⁸
- Verres himself is reprimanded by Cicero for *failing* to supply any written report to the Roman senate regarding a suspected slave rebellion.¹²⁹
- Cicero refers twice to *testificationes*, depositions set down in writing for possible future legal use.¹³⁰
- Corruption had rendered assessments made in the Sicilian census conducted by Verres wildly inaccurate; one of Metellus’ first actions was to invalidate the entire census.¹³¹
- Cicero reveals that the Sicilians had scribbled above Verres’ tribunal pasquinades regarding one of his mistresses.¹³²
- Finally, Cicero claims that the prosecutor of Dolabella frightened Verres into cooperating by showing him a *volumen maximum* containing a list of Verres’ misdeeds in Asia – a curious analogue to the even lengthier list of crimes provided by the Verrines themselves.¹³³

Expressions for the evidence as a whole

To the catalogue of written evidence just completed we may add a list of the phrases Cicero employs to designate the entire body of evidence he presents to the court:

omnium populorum privatorumque litteras iniuriasque.¹³⁴

quod tota Sicilia, quod omnes Siculi, omnes negotiatores, omnes publicae privataeque litterae Romae sunt . . .¹³⁵

nunc hominem tabulis, testibus, privatis publicisque litteris auctoritatibusque accusemus.¹³⁶

hoc testibus, hoc tabulis privatis publicisque auctoritatibus ita vobis planum faciemus ut . . .¹³⁷

tot senatoribus, tot equitibus Romanis, tot civitatibus, tot hominibus honestissimis ex tam illustri provincia, tot populorum privatorumque litteris non credisse?¹³⁸

multitudo litterarum et testium.¹³⁹

mandata, legatos, litteras testimonique.¹⁴⁰

Most of the generic expressions used here for Cicero's written evidence are variations on the formula "public and private documents," and these are lumped together with the living witnesses who testify before the court, with considerable variation in the ratio of texts to *testes*. A striking effect of these combinations is the way in which they lead to the personification of the written evidence: both the Sicilians and their *litterae* are "present" to be heard by the jury. (On another occasion, Cicero even refers to *tabulae publicae* as *testes*.)¹⁴¹ The purpose of the bombastic language is, naturally, to make the case against Verres seem overwhelming, but the personification of the *litterae* has the additional effect of making the jury itself feel surrounded. In another passage Cicero emphasizes this effect with the word order, burying the jury in the evidence: [*hoc*] *tabulis vobis testibusque indices planum faciam*.¹⁴² In a highly rhetorical imagined dialogue, Cicero responds to a Roman pest who has been sitting at the entrance to the market predicting that Verres will win unless Cicero's arguments cannot be answered at all:

Nihil putas valere in iudiciis coniecturam, nihil suspicionem, nihil ante actae vitae existimationem, nihil virorum bonorum testimonia, nihil civitatum auctoritates ac litteras: res manifestas quaeris.

Inference, suspicion, the weighing of an individual's prior life, the testimony of upstanding men, the official records of city governments – you think that all of these matter not one bit in legal proceedings: you insist on direct evidence.¹⁴³

The *res manifestae* with which Cicero crowns the particular argument he is making – and which by implication leaves the defense speechless – are found in yet another incriminating document.

Collection of evidence

How did Cicero obtain the vast and diverse body of evidence catalogued above? After being named prosecutor, he requested a period of 110 days to conduct his investigation (*tempus* or *dies inquirendi*) – an extremely short (*perexigua*) length of time, he tells us.¹⁴⁴ The collection of evidence in Sicily, about which we know the most, comprised fifty or so of those days:

Ego Siciliam totam quinquaginta diebus sic obii ut omnium populorum privatorumque litteras iniuriasque cognoscerem . . .

In fifty days, I so completely covered all of Sicily that I came to know the documents and injustices of every community and individual . . . ¹⁴⁵

Cicero boasts loudly of his speed and efficiency:

In Sicilia sum inquirendi causa profectus, quo in negotio industriam meam celeritas reditionis, diligentiam multitudo litterarum et testium declaravit . . .

I proceeded to Sicily in order to investigate. Regarding this responsibility, the speed of my return reveals how hard I worked, while my multitude of documents and witnesses reveals how carefully . . . ¹⁴⁶

Cicero's ratio of evidence collected to time spent investigating must indeed have been far from typical, and it comes as no surprise that Verres and Hortensius were dumfounded by the quantity of evidence the prosecution produced.

Although Cicero's yield of criminal documents was atypical in its abundance, the collection of written evidence was nevertheless an established part of a prosecutor's job. As we have seen, the Gracchan-era version of the *Lex repetundarum*, which survives in a fragmentary bronze inscription, provided explicitly for the collection and presentation by the prosecutor of written evidence, described by a generic phrase not unlike those of Cicero listed above: *sei qua tabulas libros leiterasue pop<licas preiutasue pos>cere proferrequ<e uolet*.¹⁴⁷ Such a clause remained a feature of the *Lex repetundarum* even after the Sullan revisions, and thus Cicero can cite the law to Marcellus when he demands a copy of the decree of the Syracusan senate: *Ego legem recitare [coepi], omnium mihi tabularum et litterarum fieri potestatem*.¹⁴⁸

In addition to the law he can quote from memory, Cicero carried with him some kind of warrant (*litterae*) issued to him by M.' Acilius Glabrio, the praetor who presided over the *quaestio* before which the case against Verres was brought.¹⁴⁹ This may be the same as the "letters of recommendation" (*tabellae commendaticiae*) to which Cicero later makes a somewhat cryptic reference.¹⁵⁰ Without the explicit powers given to him by the *Lex repetundarum* and the written authority of Glabrio, Cicero suggests, Metellus' obstructionism would have been insurmountable.

We learn from the story of the meeting of the Syracusan senate that Cicero followed a set procedure for collecting *litterae publicae* and *testimonium publicum* from the various Sicilian cities:

The Senate and People of Syracuse were greatly upset that, although in the other municipalities of Sicily I had explained to the senate and people what service and relief I was offering, and from all of these

I had received into my keeping instructions, envoys, documents, and testimony, in their city I had done nothing of the kind.¹⁵¹

As we have seen, the Syracusan senate then follows the lead of the other Sicilian cities, but in the meantime Cicero already has found a rich source of evidence in the local community of Roman citizens, that is, the *publicani* and other *equites* doing business in Sicily.¹⁵² Where cooperation was not to be expected, Cicero could conduct searches (*conquirere*), presumably with or without the consent of the party in question: in Syracuse his search of the house of Apronius yields the letter of Timarchides discussed earlier.¹⁵³

On several occasions Cicero specifically mentions the practice of “putting under seal” (*obsignare*) a document received as evidence.¹⁵⁴ Translators and commentators tend to imply that the seal was Cicero’s own,¹⁵⁵ but it almost certainly was instead that of the person or civic body that turned over the document. Cicero explicitly tells us that he had the records from the Syracusan treasury “sealed with the public seal” (*quas ego litteras obsignandas publico signo deportandasque curavi*)¹⁵⁶ – that is, that of the city of Syracuse. Sealing of this sort protected the prosecutor from any charge of doctoring his evidence; each seal would thus be broken only at the trial by the clerk and under the eyes of the jury. This means, of course, that Cicero had to make a copy or at least an extract of every document he sealed for his own use in preparing his arguments. Cicero on at least one occasion went to Verres’ house in Rome *obsignandi gratia*.¹⁵⁷ Verres later claims to a contractor that he cannot certify completion of a certain project because the relevant documents have been “sealed” and are now in Cicero’s possession.¹⁵⁸

As we have seen, Cicero on several occasions compares his investigations to the hunting of an animal whose path may be known by its tracks, for Verres had left his *vestigia* behind him everywhere, especially in the public and private documents that record his depredations.¹⁵⁹ Sniffing out such *vestigia* was part of the job of a prosecutor in a case *de repetundis*, but Cicero, it is clear, had a keener nose than most. Cicero himself, however, suggests that he was helped not so much by his own humble talent as by the carelessness of the animal he is stalking in covering its tracks. He expresses admiration for other prosecutors in extortion cases, whose investigations are arduous pursuits of “a scent or a lightly pressed footprint,” whereas his own job has been easy: “Regarding Verres, what after all is our job, when we find, by the *vestigia* of his entire body, that he has actually *wallowed* in the mud?”¹⁶⁰

The primary purpose of Cicero’s humility, of course, has been to set up this second joke on *verres* meaning “pig.” Nevertheless, what Cicero implies is probably true: the scope, complexity, and abundance of Verres’ crimes meant that his *vestigia* were easily and everywhere detectable. The prosecution of Verres thus brought together a prosecutor who was extremely talented at uncovering and understanding evidence – especially written evidence – and a defendant who had left behind an uncommonly conspicuous version of

what a later age would have called a “paper trail.” It is in this felicitous conjunction more than anywhere else that the origins of Cicero’s triumph are to be sought.

Documentary expertise

Several times now we have remarked on the special talents Cicero brought to the case. This brings us to an obvious question: where had Cicero acquired the ability to assemble, understand, and organize such a spectacular array of diverse evidence? He must have relied heavily on expertise acquired in the years prior to his quaestorship, in large measure occupied with the defense of *publicani*, private contractors for the collection of state revenues; in Chapter 2 we saw how Cicero’s familiarity with their documentary habits led him to important evidence in an unexpected place. We might expect that even before he began his career as a pleader, Cicero had received careful training in the use of written evidence in court. A glance at his first rhetorical treatise, the *De inventione*, compiled, he tells us, directly from his school notebooks, might at first seem to suggest such training, for the work treats at length various kinds of *controversiae in scripto* – legal disputes arising from a written text.¹⁶¹ But most of these *controversiae*, illustrated with hypothetical examples, involve what are essentially hermeneutic problems regarding the meaning of a law or other written text of legal standing; in most there is some divergence between *scriptum*, literal meaning, and *sententia*, author’s intent. Some of Cicero’s arguments in the Verrines, including his several “close readings” of Verres’ edicts, belong to this category, and on a number of occasions Cicero exposes how Verres employed trumped-up *controversiae in scripto* to deprive Sicilians of inherited property.¹⁶² But nowhere in the *De inventione* or, for that matter, in any of Cicero’s subsequent rhetorical manuals¹⁶³ is there a word about fraud, forgery, or the corruption or destruction of documentary texts – even though, in the documentary culture revealed by the Verrines, the ambiguity of a written text was much less likely to concern its shades of meaning than its integrity as a physical object.

Apart from his rhetorical training, Cicero also studied law with Q. Mucius Scaevola the augur and then, when he died, with his younger relative Scaevola the *pontifex maximus*, both famous jurists. It seems unlikely that the former, already in his eighties when Cicero began to frequent him, could have prepared the young student for the legal implications of rapidly expanding Roman use of written texts, but Cicero may have learned something in this regard from the junior Scaevola. Perhaps, however, the core of Cicero’s documentary expertise lay not in his vast knowledge of documentary practices, which he may have acquired haphazardly rather than by any formal training, but rather in a certain predisposition and aptitude for documentary problems, probably even with some practical experience, which he brought with him to Rome from Arpinum. We are reminded of the one detail we know of the

domestic life of the Cicerones, mentioned in Chapter 1: in a letter to Tiro, Quintus Cicero recalls that, when he and Marcus were boys, their mother used to seal “even the empty wine flasks” in order to guard against stealing.¹⁶⁴ In this tightly run equestrian household, Cicero must have learned to keep accounts with scrupulous care; perhaps he also acquired a loathing for thieves.

We will return to the matter of Cicero’s origins at the end of Chapter 5.

THE TRIAL OF VERRES

The stage for which Cicero prepared his case was one in which the written word already appeared regularly as both backdrop and prop. There was, first of all, the *Lex repetundarum* itself, doubtless set up, in the form of a bronze inscription, somewhere near the tribunal. There was also the formulaic accusation along with the specific request for damages, with, below, the *subscriptiones* of the prosecutor and his assistants.¹ Finally, there were several written texts that regarded the composition of the court and the production of a verdict. The close link between these texts and the exposure of the court's workings to the public gaze is evident in A. N. Sherwin-White's close reading of the Gracchan-era extortion law:

A special feature of this law is its insistence on publicity for all its procedures, particularly for the selection of jurors, the management of the court, and the voting of the jury. When the praetor draws up his annual list of four hundred and fifty jurors, he must read it out in a loud voice at an assembly of the People, and publish it on a public notice-board throughout the year. Not only the plaintiffs and defendants but every citizen has the right to make copies of this list. The praetor must publish the lists of jurors chosen and advocates appointed for each case in the same way. Thus the administrative control of the jurors is regularly submitted to the eyes of the People. This attention to publicity is particularly significant at the voting of the jurors and at the counting of their votes. Every detail is regulated, the size of the voting tablets, the way the jurors must hold the tablets and put them in the urns, and just how they are to conceal with their fingers the letters A or C which signify acquittal or guilt. The People surrounding the court must be able to see that the jurors vote but must not see how each individual has voted. At the counting of the votes a selected foreman shows each tablet, taken from the urn at random, to the crowd around the tribunal and declares the verdict inscribed on it. The praetor as president of the court then declares the result of the total poll. The People is

associated with a court in which it has no part, and in which the real power is in the hands of the limited oligarchical class of the equestrians. The function of the People is thus that of a witness to the truth or of a watch-dog.²

Despite the Sullan “reforms” – the “limited oligarchical class” is now the senatorial one – the role of publicity through writing seems to have remained unchanged, for each of the three uses of writing discussed above is mentioned by Cicero in the Verrines:

- 1 Lists of eligible jurors. In a rhetorical aside he refers to the lists of eligible jurors by pointing out that, if acquitted, Verres himself will appear on them for future trials.³
- 2 Lists of selected jurors. In the speech for the first *actio*, Cicero looks back at a moment before Hortensius’ election as consul when things seemed to be going well for the side of justice: an honest jury had been assembled, and their names, Cicero tells them, could be checked in booklets (*libelli*) that were “in everyone’s hands.”⁴ Both Pseudo-Asconius and the *Scholia Gronoviana* reveal that these jury rosters had not been “published” by the praetor but rather were circulated by the prosecution (presumably they could be circulated by the defense in other circumstances) precisely to prevent alteration of the jury by the praetor after its constitution:

The names of the jurors were deposited with the presiding praetor [*quaesitor*], and on occasion a corrupt praetor would insert one name for another, i.e., remove the names of honest men and replace them with those of men of little character. Knowing this Cicero made a number of *libelli* and distributed them among the many persons who stood next to the tribunal, so that with the people as witness [*populo teste*], no one might commit any offense.⁵

The scholiast’s last remark in this gloss on Cicero is strikingly similar to Sherwin-White’s comment on the provisions of the surviving text of the Gracchan-era law: “The function of the People is thus that of a witness to the truth or of a watch-dog.”

- 3 Ballots. But the most impressive spectacle meant for public witnessing and involving written props was, ironically, the secret ballot. Under the terms of the Gracchan-era law, jurors in an extortion case employed as ballots tablets already marked with A for *absolvo* (“I acquit”) and C for *condemno* (“I find guilty”), one of which they cancelled before placing the ballot in an urn.⁶ On this system William Harris remarks, “It looks as if a democratic-minded legislator intended this provision to help those who might have had some difficulty in writing.”⁷ But those who seek

in these ballots evidence (either positive or negative) regarding literacy are missing the point: the advance preparation of the ballots in, as the law stipulates, black ink, was not a crutch for semi-literate jurors but rather was an aid for those whose penmanship was inferior to that of a professional scribe or sign-painter, in the interests of readability for the ballot's ultimate audience: the crowd of spectators to whom each ballot was shown by the foreman of the jury. And the simple device of a single letter concerned not the public's literacy but rather its ability to see from a distance as it fulfilled its crucial role as witness.⁸

Perhaps the emphatic appeal to public scrutiny made by the pre-marked ink ballots of the Gracchan-era law was simply too democratic for Sulla and consequently was a target of his reforms. In any case, by Cicero's day jurors (now senators) used as ballots wax tablets which they presumably marked themselves. The watchful eye of the public was still important (now it was the *equites* who watched most closely), but corruption could be quite difficult to detect. Cicero in the Verrines refers repeatedly to a scandalous undermining of the secrecy of the ballots by none other than Hortensius in a trial *de repetundis* a few years earlier: the jurors had been given tablets smeared with wax of different colors so that the defense could be sure that the votes it had bought had been delivered.⁹ Already in the *divinatio* Cicero had suggested that Hortensius would take advantage of the less rigorously secret balloting for a prosecutor in order to check the votes of jurors he had bribed.¹⁰ There Cicero also refers to the scandal of the colored wax, and his two further references in the first *actio* make it clear that he was genuinely concerned about the possible compromising of the anonymity of the vote. "How do you think I will take it if I learn that the process has been compromised by any similar method?"¹¹ Cicero asks, warning the defense and the jury that there will be consequences for corruption, and inviting all present to join him in keeping close watch on the proceedings.¹²

But let us return to August 5, 70 BCE, when Cicero's case against Verres first began to unfold, in a context which, as we have just seen, was already amply characterized by the written word. The jury began convening at the tribunal of the extortion court, set up at the far eastern end of the Forum, near the temple of Castor and Pollux,¹³ at around three in the afternoon. Anyone who has been in Rome in August can add this detail regarding the setting: it was hot. The jurors found Cicero waiting for them, and he was not alone: with him were not only his assistants and witnesses but also what must have been a staggering number of *capsae*, document boxes which may have been locked and which certainly were guarded – Cicero had expressed anxiety about their security already, in the preliminary hearing to choose a prosecutor months before.¹⁴ It seems a reasonable supposition that until the trial Cicero had kept them under watch in his own house, at this point

still the one once belonging to his father, in the equestrian district of the Carinae, on the edge of the Esquiline nearest the Forum. Thence Cicero had made his way earlier in the day, followed by the procession of *capsae*, through the crowds of onlookers that were gathering in the area around the tribunal. The *capsae* were the day's first sign that something unanticipated was going to happen, and Verres and Hortensius probably had the news from eyewitnesses before they reached the court. By the time both sides, the jury, and the presiding judge were present, the surrounding area was packed with spectators, and not all of these were residents of Rome: a *frequentia totius Italiae* had flocked to the city for the elections, the games, and the census,¹⁵ and they were quite willing to endure the heat to witness the sensational trial and carry home their own first-hand accounts.

Cicero struck fast and furiously. In his surviving speech for *actio prima* – the only one actually delivered at the trial – Cicero briefly outlines Verres' crimes and explains his plan to forgo the normal prosecutor's speech and instead proceed directly to the presentation of evidence, a procedure he defends with a few fairly obscure but apparently convincing precedents. Once under way the parade of evidence continued for several days.¹⁶ Individual witnesses were called to testify; delegates of the Sicilian cities gave (in most cases by reading) public testimony; and *capsa* after *capsa* were opened, seal after seal were broken, tablet after tablet and roll after roll were read aloud by the clerk. Cicero must have supplied a minimum of context for each document, and for some of the evidence we must imagine that his explanatory comments were quite involved. In other words, Cicero did "speak" at the trial beyond his surviving speech for the first *actio*, but the circumstances required brief remarks characterized by clarity rather than eloquence.¹⁷

On the third day, Verres feigned illness, and the trial continued in his absence. On at least one occasion, Hortensius interjected an objection, but then declined to cross-examine Cicero's witnesses.¹⁸ (Cicero's written evidence could not, of course, be cross-examined – an additional virtue from the prosecution's point of view.) Nine days were needed to present all the evidence, at the end of which, according to Pseudo-Asconius, "Hortensius is said to have been so dumbstruck that he gave up his planned line of defense, and Verres so crushed and discouraged that he fled into voluntary exile."¹⁹ So ended the trial, for which Cicero had spent eight months preparing.²⁰ "Read it even louder, please," Cicero prompts the court clerk on occasion in the imagined second *actio*, a request he probably had actual occasion to make during the evidence phase, for it was the voice of the clerk, responsible for reading written evidence to the jury, more than the voices of the witnesses present or even that of Cicero himself, that hounded Verres into exile.²¹

Early in the first book of the published speech for the second, unrealized *actio* of the trial, Cicero defends his decision to forgo any lengthy speech until now against an anticipated complaint by Hortensius that an earlier speech of Cicero might have helped his client. After a careful defense of his

modification of standard procedure, Cicero appeals to Hortensius to admit that, in cases such as the present one, the eloquence of orators influences verdicts little in either direction:

We are concealing, Hortensius, what has often been our experience in addressing jurors. In this kind of case, when anything has been stolen or extorted from someone, who ever listens very much to *us*? Isn't all the attention of the jurors focused either on the written records or on the witnesses [*nonne aut in tabulis aut in testibus omnis expectatio iudicium est*]?²²

The disjunction in the last sentence is mild but still gives the idea that, depending on the case, the verdict could hang more on written evidence or more on oral testimony – in the present case, the jury has been treated overwhelmingly to the former. The statement, along with the provisions for written evidence already in the Gracchan-era *Lex repetundarum*, makes it likely that prosecutions that depended mostly on written proof had been conducted before the trial of Verres – perhaps they were even the rule, as at least account books must always have been central to an extortion case. Cicero's prosecution thus may have surprised the defense only by a relative innovation: not the use of written proof *per se*, but the quantity and complexity of the body of written evidence Cicero had collected, compiled, and organized for the jury's consumption.

But Cicero's more concrete innovation, the abandonment of a lengthy *actio prima* speech, combined with the vastness of his body of written evidence to subject the trial to a startling – and probably unprecedented – domination by the written word. On occasion in the published speeches, Cicero seems to concede absolute authority to his written evidence, more important than any conceivable oral testimony and the direct source of any convincing words the orator might pronounce: “Indeed I, even if all Sicily were to testify to this, nevertheless would not dare affirm it if I could not read these edicts word for word from his own records, as I shall do.”²³ This line was never pronounced in court, but its double effacement of orator and oral testimony was implicit in the case as actually argued. Cicero's claim, quoted above, that no one heeded the speeches of pleaders must be taken with a grain of salt, but his procedural modification certainly emphasized evidence even more than was customary. Combined, the maneuver and the predominance of *tabulae* over *testes* among the evidence effected in the trial an almost complete subordination of the speaking of orator and witnesses to the reading of written texts.²⁴

But Cicero went further still, for it is not just what his written evidence *said* that incriminated Verres, but also what it did not say. Cicero makes the fraudulent manipulation of documents a central part of his charge:

Hoc modo iste sibi et saluti suae prospicere didicit, referendo in tabulas et privatas et publicas quod gestum non esset, tollendo quod esset, et semper aliquid demendo, mutando, interpolando.²⁵

This is the way he learned to look after himself and his welfare: by setting down in private and public records what had never been done, by removing what had been done, and always by subtracting, altering, or inserting something.

These words follow an allusion by Cicero to a scandalous incident of judicial corruption during Verres' urban praetorship. The president of a court under his jurisdiction was accused of having altered the composition of the court in order to facilitate its bribery; his conviction was secured by what purported to be the sealed original list of jurors, provided by Verres himself. In a *praeteritio* Cicero suggests that this list was a fraud (*falsus codex*) designed to deflect attention from Verres' own role in the corruption of the court; Pseudo-Asconius specifies that Verres altered the true list by erasing some of the original names and inserting others (*sustulit quos in suis tabulis habebat et alios in litura scripsit*).²⁶

Cicero makes an issue of erasure on three other occasions. Accounts of Verres' management of the estate of a young ward contain a final entry that would suggest that money was at last turned over to the boy, but the refund never really happened: Verres "made an entry at the bottom of the last leaf of the account book over a scandalous erasure" (*in codicis extrema cera nomen infimum in flagitiosa litura fecit*).²⁷ "Why the entry is at the bottom and over an erasure," Cicero tells the jurors, "I'll let you judge for yourselves." Verres also employed erasure in the aftermath of his illegal trial of Sthenius *in absentia*: "He turned the blunt end of his stylus to his own *tabulae*" and "removed from the tablets what was there, and made them say that the verdict was given to the man's face."²⁸ Since it was widely known that Sthenius was in Rome at the time of the verdict, Cicero seizes the opportunity to mock the futility of Verres' fraud:

Were you so inspired by reckless insanity that you dared to corrupt public records [*tabulas publicas corrumpere*]? And how did you corrupt them? Didn't you do it in such a way that – even if all of us were to remain silent – your own tablets would be able to condemn you? Bring forward the *codex*, please – take it around and show it to the jury. Do you all see that this entire entry, where it says the man was present for the verdict, is over an erasure? What was written there before? What mistake did this erasure correct? Why are you waiting for arguments from *me* about this crime. I say nothing – the *tabulae* are here before us, and they are shouting that they have

been corrupted and interpolated [*se corruptas atque interlitas esse clamant*].²⁹

This is a striking twist on the device that was considered earlier: the voice of the prosecutor yields to that of his written evidence, but the latter speaks not with the words it bears but rather by the mutilation it has endured, “shouting,” as it were, by its silence. Cicero’s attention to the fact that documents are not merely texts but are also physical objects is even more dramatically illustrated in a third case of Verrine erasure, already described at length in Chapter 2: the corrupted accounts of Carpinatius, of which Cicero makes an exact copy that transcribes even the erasures of the original. In the published speeches, Cicero has each of these three corrupted documents shown directly to the jury,³⁰ and this must be what happened during the actual evidence phase, since mere reading by the clerk would have missed the point. Indeed, given the complexity of Cicero’s written evidence, we must imagine that many or even most of his other documents were passed on to the jury for inspection after being read aloud.³¹

Other charges of manipulating documents do not involve erasure. Regarding the sale of tithes, Cicero accuses Verres of having “altered public records” (*tabulas publicas commutavit*) – here, however, the change has occurred between the sale and its being recorded, for Verres has entered amounts directly contradicted by the evidence given by the Sicilians themselves.³² In Messana, Verres committed a double fraud with respect to the city’s records: first, by avoiding the generation of official records by, for example, avoiding having sums paid to him directly out of the city treasury; second, by having payments to him entered as belonging to public contracts which, in fact, never existed.³³ Elsewhere, Verres used deceptive entries (*nomina*) in public accounts to conceal his embezzlement behind shadowy administrative costs.³⁴ After his infamous naval disaster, Verres had each ship’s captain swear, under duress, that his ship had been equipped with the requisite number of sailors; their statements “he wrote down on *tabulae*, and these he sealed with the seals of his friends.”³⁵ Cicero suggests that Verres’ own advisors warned him that such a document would only call attention to the issue. But “already he was in many contexts so used to such folly that even in public he would order that whatever he wished be removed or written down in the records of the municipalities”³⁶ – an echo of the charge quoted at the beginning of this discussion. When the mere manipulation of documents was inadequate, Verres could resort to their withholding or destruction: we have seen the former with respect to his *rationes*, and the latter in the case of the accounts of the company of Carpinatius. In the published speeches, Cicero, in each instance of missing records, makes the most of the apparent obstacle to the prosecution by insisting he can allege what he pleases where documents have been suppressed.

Finally, we may note that Verres himself had made use of the charge of corrupting public records (*litteras publicas corrupisse*) against Sicilians while he was propraetor. In one case he made the charge – falsely, according to Cicero – against a man of Bidis.³⁷ He did the same against none other than Sthenius, the circumstances of whose trial were obscured by Verres' alteration of his own records. Interestingly, Cicero tells us that the crime of corrupting public records was specifically recognized by the laws of Sthenius' hometown of Thermae.³⁸

Cicero refers to no similar law in Rome, but the point of his fuss over Verres' corruption of documents has not been to introduce a new charge into the trial. Rather, the demonstration of Verres' erasures and alterations explains why direct documentary evidence is lacking for some of the prosecution's charges, creates an aura of suspicion around Verres himself, and raises the possibility that even more crime was committed but cannot be detected because the suppression of the evidence was more successful. Furthermore, Cicero's references to the corruption of documents serve another purpose which, though certainly more conspicuous in the rhetoric of the published speeches than it could have been in the actual trial, probably influenced Cicero's choice and arrangement of written evidence for the jury. Verres and his corrupted documents have an exact opposite in Cicero's case against him: the trustworthy people and records that lend their authority to the prosecutor's evidence. Cicero refers to these in various but similar ways: "the *tabulae* of most reputable persons"; "many men of first rank as witnesses, and the *tabulae* of many of these"; "both the public *testimonia* of most reputable cities and the private *testimonia* of men of first rank."³⁹ A sharp contrast between Verres and the meticulously honest Sicilians is drawn by Cicero's reference to "public *rationes* that were not interpolated nor reordered nor hastily invented, but which rather were precise, organized, and set down and compiled in the ordinary way."⁴⁰ As aggressively as Cicero attacks both Verres and his records, he praises a certain Q. Tadius and the character both of his testimony and of the account books he has provided as evidence:

Should we not believe the accounts and testimony even of Tadius? Why proceed with the case? What would it take to allow everyone to commit every crime and offense if not this: not to trust the testimony of very honest people and the account books of upstanding men [*hominum honestissimorum testimoniis et virorum bonorum tabulis non credere*]?⁴¹

It is striking that this early use by Cicero of *boni* (later the political watchword by which he designates, irrespective of *ordo*, the "right kind of people") should appear in connection with accurate and trustworthy accounts.⁴²

As Cicero later in his career will have occasion after occasion to demonstrate, a *bonus* may be recognized by the company he keeps, and so too his

opposite. Significantly, Verres' written records keep the same degenerate company as does Verres himself. Cicero makes the doubtless exaggerated claim that Verres as city praetor transferred the activities of his office to the house of his mistress, Chelidon. He describes the scene thus: "The house was full . . . Some were counting out cash, tablets [*tabellae*] were being sealed by others: the house was stuffed not with the normal assembly of a prostitute but with the crowd of a praetor."⁴³ Cicero exposes the partiality of the attorney Verres had imposed on Sthenius in Sicily by revealing that the very same man is sitting next to Verres as an assistant to the defense:

Do you see that man with delicate curls and bronze skin, who stares at us with an expression on his face designed to make him seem very clever to himself, who is handling the *tabulae*, who is jotting things down, who gives advice, who is sitting next to him? *That* is C. Claudius . . .⁴⁴

The description of Claudius' appearance is probably meant to suggest effeminacy. Finally there is Timarchides, Verres' right-hand man in Sicily, whose job it was to "sniff out" (*odorari*) opportunities for theft or debauchery by his boss – whom, as we have seen, Cicero also likens to an animal – and who used to satisfy his own appetites with Verres' leftovers.⁴⁵ This man was, according to Cicero, "in the continuous business of selling, with consummate skill and cleverness, all the decrees, commands, and official documents (*decreta, imperia, litteras*) of Verres."⁴⁶ Cicero continues: "Know that for three years in Sicily it was not Athenio" – leader of a massive Sicilian slave revolt – "but the runaway Timarchides who reigned in every town"⁴⁷ – a ruthless joke on Timarchides' status as a freedman, a matter to which we shall return in the next chapter.

In each of the three cases just considered, the stock characters of satire and polemic – the whore, the *cinaedus*, and the ambitious *libertus* – appear in an inversion of hierarchy marked by their access to the bed, the ear, and, most significantly for our purposes, the written documents of a Roman magistrate. Writing here symbolizes the power and order of Rome, overturned by Verres, just as he had overturned the commemorative inscriptions of the victorious Africanus.

Of course, such satirical portraits of the debasement of a Roman praetor and his documents would have been difficult to achieve in the trial, during which Cicero could at most have sketched them by his arrangement of evidence and, perhaps, by occasional prefatory remarks on the context and importance of a given document or witness. Nevertheless, they are not entirely a rhetorical afterthought. Chelidon, Claudius, and Timarchides merely embody with familiar stereotypes the more abstract but ultimately more important implications of Cicero's body of evidence. We already have seen in the last chapter

that the number of written documents used by the prosecution was overwhelming, but looking back from the published speeches we see that the importance of writing to the case cannot fully be quantified simply by counting documents. For Cicero did not merely build a case *out of* written texts; rather, his case was to a large extent *about* writing, about its use and abuse, about corruption effected by and through writing and, at times, about the debasement of writing itself.

One might expect the written word to be tarnished by such associations and to appear as Verres' accomplice in crime. Instead, it emerges as the hero of the story told by the evidence. The *litterae publicae* of the Sicilian cities, the accounts of upstanding individuals, and, in the end, even the documents written or altered by Verres stand before the court to tell the truth, thus becoming the voice of the Sicilians and the eyes of the jury – and, by extension, those of the Roman people. In the published speeches, Cicero even goes so far as to make his written evidence into Verres' executioner: "Can you not feel, utterly deprived as you are of restraint and reason, that you are being strangled by these documents?"⁴⁸ An even unkindlier cut comes a little later, when Timarchides unwittingly turns against his patron by way of the appearance of his name in the public accounts of Halaesa: "Timarchides," Cicero snarls to Verres, "your household's pillar of strength, is pressing his fingers into the neck of your defense."⁴⁹ But in all likelihood by the time Cicero wrote these words, Verres, gasping for breath in the August Roman heat, had fled into comfortable exile at Marseilles.

LITTERAE MANENT

The publication of the Verrines

Cicero, as mentioned in Chapter 2, eventually acquired a villa near Puteoli, “built on the beach and visible to travelers on the road to Puteoli from Lake Avernus.”¹ He named its grove and portico *Academia*, after the gymnasium of Plato, and there wrote his own *Academica*. Not long after the orator’s death, there erupted on the grounds a hot spring that soon was discovered to have medicinal properties. Dedicating the spring to his former master, a freedman of Cicero named Tullius Laurea set up a verse inscription seen, admired, and transcribed by Pliny the Elder many years later into his encyclopedia “so that it might be read everywhere,” whence it is known to us.² Despite a reference in its first line to the “Roman tongue,” the spring’s curative effect was not to be had by tasting: rather, drops of water brought relief to tired eyes – a fitting tribute, the poet concludes, to one who “is read in every corner of the world.” This last bold claim is amply borne out by surviving papyri from Egypt, which also suggest that the Ciceronian work which enjoyed the widest distribution was precisely the collection of speeches against Verres, rivaled only by the comparably famous speeches against Catiline.³ Though the ultimate diffusion of the Verrines is beyond our scope here, we turn in this chapter from Verres’ trail of written evidence to retrace at least the first few steps of the path which connected the events in the southeast angle of the Roman Forum in August, 70 BCE, to the farther corners envisioned in the tribute of Tullius Laurea. Our question is deceptively simple: why did Cicero publish the Verrine orations?

This question conceals several others which the following discussion will address only indirectly, as they require lengthy answers which would take us far afield, and because they have been amply treated elsewhere. For the question, “What was ‘publication’ in the Roman world?”, the best answer is still to be found in a brief study by Tönnes Kleberg, which has the added merit (though a potential weakness in some contexts) of emphasizing the evidence regarding Cicero.⁴ To this may be added studies by Guglielmo Cavallo and Paolo Fedeli in a recent collection they helped to edit; both are excellent in their collection and analysis of relevant literary evidence.⁵ Publication in part, from the point of view of booksellers and with an

emphasis on papyrological evidence, is the subject of a chapter in a recent guide to the ancient book by Horst Blanck.⁶ All of these contain references to earlier discussions; among these is that by Frederic G. Kenyon, which remains the best general treatment in English.⁷

The narrower question of how Cicero in particular published his works is addressed at some length by all of the above save Blanck. With respect to the orations, it is also the specific object of two important studies. The first is a dissertation by J. N. Settle that treats the general subject of Ciceronian publication in a lengthy introduction and then devotes a chapter to the publication of each of Cicero's surviving speeches.⁸ It is primarily useful for its collection of evidence, drawn mostly from Cicero himself (especially the letters and the oratorical treatises), the *scholia*, and some later readers like Quintilian. Shorter but subtler in its analysis is the introduction to Jane W. Crawford's edition of the "lost and unpublished" orations.⁹ Useful on the specific subject of Atticus' role as Cicero's "publisher" (which postdates the trial of Verres by a decade) is a 1986 article by John J. Phillips.¹⁰ Other short or specific discussions of the methods of Ciceronian publication are too numerous to cite here; the interested reader is referred especially to the notes of Crawford's introduction.

All of the above may be summarized for our present purposes as follows: although strictly speaking "publication" in the ancient world could be as simple as lending a copy of one's work to a friend for private transcription, it could also begin as a more elaborate affair in which the author employed a team of scribes to make an initial quantity for distribution. These in turn could spawn other copies, either on the initiative of individuals who had a copy made for themselves, or in connection with the ancient book trade, about which, however, we know too little. Cicero saw to the initial production and distribution of works he decided to publish, and he could and did count on the fact that, by whatever mechanisms, copies of these would reach a wider reading public. How wide? Crawford cautions, "It would be futile to speculate on the size of the Roman readership for Cicero's speeches: our evidence is simply too slender to permit even an intelligent guess."¹¹ Nevertheless, although the claim that, by Cicero's death, his works had reached "every corner of the world" is hyperbole, there clearly came a time, usually if not always in Cicero's lifetime, when more people had read a given Ciceronian speech than had heard it.¹²

At least on occasion, published speeches could reach enough readers, or at least enough of the right readers, fast enough to influence the same political events from which the oral original had emerged. Hence Crawford, by taking the unusual tactic of scrutinizing Cicero's motives for deciding *not* to publish certain speeches, demonstrates "that publication of speeches was taken seriously and that published speeches had at least as much potential for political impact as did their orally delivered originals."¹³ Crawford is responding to the arguments of Wilfried Stroh,¹⁴ who downplays political motives in

order to emphasize the reason Cicero himself seems to give for publishing his speeches: to provide a new generation of students of oratory with *exempla* delivered by the leading orators of their day.¹⁵ Of course, behind this altruistic goal is Cicero's broader desire to promote his reputation for eloquence. Combining both generosity and self-interest is what we might call Cicero's identity as an artist; George Kennedy sporadically takes up the question of publication in relation to Cicero's artistic (i.e., literary and rhetorical) goals.¹⁶ Similar views, combined with an emphasis on literature as political and social commentary, are expressed by Richard Enos, who in a very interesting study of what he calls the "literate mode" of Ciceronian rhetoric concludes that, in part as a result of revision for publication, Cicero's published speeches "transcended the immediate issues of litigation" and became instead "rhetorical literature, aesthetically contrived pieces of discourse that respond not to the particular situations they appear to address but function rather as larger, social statements."¹⁷

Outside targeted discussions like these, most scholars tacitly accept a combination of all these motives – political, didactic, self-promotional, artistic – in answer to the general question "Why did Cicero publish his orations?" Indeed, just such a synthesis is suggested in what seems to be the latest word on the subject: a brief review of the evidence by Andrew Riggsby.¹⁸

One thing is sure: by Cicero's day the publication of speeches was an established Roman practice that stretched back, in one way or another, at least to Cato the Censor.¹⁹ By the time he undertook the prosecution of Verres, Cicero had published three orations; by the end of his life, he had published eighty. Among other sources, Cicero's letters provide abundant evidence for oratorical publication by others. Under the circumstances, it seems wise to adopt the hypothesis that publication was a conspicuous phenomenon in Roman oratory in Cicero's day and that an orator would likely be aware of at least the possibility of an ultimate reading public even before beginning to prepare a speech for oral delivery.

But let us leave these general controversies and return to the particulars of the Verrines. For the five books of speeches for the second *actio*, we do not need to look far for the moment in which reading public surpassed listening public in size – it occurred at the point of publication, as the speeches had no earlier audience. We have no earlier example of the publication of an undelivered speech, but this may simply reflect the incompleteness of our knowledge. To the question, "Why should Cicero have published a speech he never gave?" most modern scholars have responded, "Why not?" Cicero could not have been sure that Verres would abandon the defense; he must therefore already have made at least preliminary drafts of speeches for a second phase of the trial. Publication allowed Cicero to add to his actual success the oratorical triumph of which early victory had deprived him, and there was, in any case, no sense in letting his preparations for a full trial go to waste: as Cicero

himself puts it in a different context, “Eloquence which has no one to admire it is not, I think, eloquence at all.”²⁰

Implicit in this answer is the hypothesis that the published speeches for the second *actio* represent more or less what Cicero would have said in court had he been given the chance. This hypothesis vindicates the speeches as genuine examples of Ciceronian oratory: far more important than the fact that Cicero *wrote* the words therein is the assumption that he *could have spoken them* before assembled Romans in the Forum. Any other conclusion reduces the text to a “rhetorical exercise” or “historical monograph,” an error, in the words of Loeb translator L. H. G. Greenwood, by which “we should have lost more than we should have gained.”²¹

More even is at stake than Ciceronian eloquence. Consider recent words on the matter by Fergus Millar:

Cicero, however, had either already written or went on to write five further speeches that would have been required; . . . (paradoxically) these undelivered speeches evoking the atmosphere of the year 70 suggest, more than any other evidence we have, the force of popular opinion as mobilized in the Forum and the way in which *quaestiones* functioned both as representatives of the *populus* and, quite literally, under its gaze.²²

These remarks come from a book in which Millar seeks to demonstrate the fundamental importance of the daily, “face-to-face” meetings of the Roman “crowd” with the Roman ruling class. It is more than a little disconcerting that the best evidence for this (“more than any other evidence we have”) should come from speeches first addressed to an audience not from a platform in the Forum but from the columns of a papyrus book. Millar gets around the difficulty with the same plea made with awkward insistence by Greenwood: Cicero wrote the speeches he would have given.²³ Millar is convinced of this by the phenomenon to which he alludes at the end of his comment: Cicero’s repeated evocation of the “gaze” of the *populus Romanus* – for Millar, the fundamental condition of the Forum – a matter to which we shall return in a moment, albeit with a different explanation.

Let us turn from modern scholars to an ancient source that has provided valuable information in previous chapters: the commentary on the Verrines that now goes by the name “Pseudo-Asconius,” as it survived the Middle Ages in codices containing four commentaries on Ciceronian speeches by the first-century CE scholar Q. Asconius Pedianus, though the Verrine commentary has been shown to be probably a fifth-century compilation of several earlier compilations.²⁴ Pseudo-Asconius’ last comment on the text of the first *actio* is on Cicero’s final sentence, *Dixi* (“That is all I have to say”). The scholiast observes that this formulaic closure is here included in the text of the oration for the dramatic way it emphasizes how little Cicero has

said as a result of his unexpectedly abbreviated format. Pseudo-Asconius then describes what happened next:

The first *actio*, however, does not finish there. From this point on witnesses will be brought in by Tullius, though writing out their testimony in the oration would not have been at all elegant. The first *actio* went on for several days, during which witnesses of Verres' various crimes were brought forth, and public and private documents were read by the clerk, by which things Hortensius is said to have been so stunned that he abandoned the planned defense, and Verres so crushed that he fled into exile of his own accord. The business of the trial went no further than this, with one exception: Tullius, fearing that so much work was slipping away as if in silence, pretended that Verres had appeared in court after the recess, so that having been twice defended, he might be accused again.²⁵ And just as he had seen to victory by the shortness of his speaking, so he achieved the praise of his eloquence in the guise of a repeated accusation by writing out the remaining books, which follow the others.²⁶

The commentary on the second *actio* thus begins, "Nothing from this point on was spoken; all rather was written against the accused . . ." ²⁷

Pseudo-Asconius' explanation of the motives behind publication is consistent with that given in a roundabout way by Cicero himself at the beginning of the second *actio*, in his construction of the fiction of its actual delivery. Cicero first notes the "false" rumor that, after the first *actio*, Verres "would not dare to look the jurors in their faces, or to show his own to the Roman people." However, "He is ever Verres: as ready to listen as he is eager to dare" – a pun on *audire* and *audere*. Cicero proceeds:

He is present, he answers the charges, his defense goes on. He leaves himself nothing, not even the possibility that by remaining silent and absenting himself after being manifestly caught in most disgraceful affairs, he might seem to have sought a modest end to his immodesty. So be it, gentlemen of the jury: I do not regret that I am about to gather the fruit of my hard work, and you, that of your virtuousness. For if he had carried out his original intention – namely, not to be present – my efforts in preparing and constructing my prosecution would receive somewhat less recognition than is expedient for me, and the praise due to you would have been dramatically weakened and dimmed.²⁸

Naturally, Cicero did not hope to fool his readers – at least not his first readers – with this pretext, as the events of the sensational trial were well known, and some at least of his readers must even have been present for the first *actio*.

Furthermore, this excursus, which continues even beyond the passage cited, is far longer than would have been necessary to establish the narrative device of the substitution of a fictitious Verres present at the trial for the real Verres who fled to Marseilles. Instead, Cicero's primary purpose here is to explain another substitution: that of a reading public for a live audience. When he tells us what would have been possible only if Verres had been present, he really is telling us what remains possible, despite Verres' flight, through publication of the undelivered speeches. Cicero himself answers our original question thus: "deprived of a platform for my eloquence by the trial's abrupt end, I salvaged my hard work by publishing speeches for the unrealized second *actio*."

We are surprised, however, that Cicero could conceive of a reading public that could be anything like a substitute for the audience it had been his fortune to have during the trial. In his speech for the first *actio*, Cicero refers to his audience as "a crowd from all of Italy . . . which convened at the same moment from every direction for the sake of the elections, the games, and the census."²⁹ Pseudo-Asconius gives this note:

He is referring to a crowd of the rural *plebs*, to whom he wished to make known his integrity. A multitude convened from *municipia* of every type, either for the purpose of voting as a result of the *comitia*, or for the sake of the votive games – those in the name of the Romans, those of Victory, and those of the plebeians – or so that they might be registered in the census conducted by the censors of that time, Gellius and Lentulus.³⁰

This crowd not only was numerous but also could be unruly once whipped into outrage by the prosecution's case: the president of the court, M.' Glabrio, had to call an abrupt recess in the middle of especially inflammatory testimony.³¹ In the speeches for the second *actio*, Cicero asks the jury to remember how the *testimonium publicum* of Herbita had provoked "the groan of the *populus Romanus*, who have not once failed to gather for this trial."³² Cicero's insistence here on the crowd's presence is somewhat shrill: the spectators, in fact, had returned home long since, or rather they lingered, like the trial itself, only as rhetorical fictions.

Even before he lost such an enviable audience, however, Cicero may have been thinking bigger. In the first place, he would, of course, have published the speeches of the second *actio* even if they *had* been delivered, for reasons we have discussed in general terms above – at the very least, Cicero could have expected interested spectators to have reviewed the trial's arguments and rhetoric in published form and that, eventually, students too young to have attended the trial would read its speeches in school. In addition, Cicero's suggestion that "all Italy" was present in the audience is hyperbole, and even some persons in Rome who wanted to follow the trial could have been

prevented from doing so for this or that reason, a possibility Cicero mentions once in passing.³³ Anyone who had missed the trial could have joined its audience after the fact as a reader. In Sicily, surely, the speeches found enthusiastic readers among both Romans doing business there and native Sicilians who spoke Latin.³⁴

"Verres," Cicero taunts, "understands that I come to this case so prepared and equipped that I will fix his thefts and crimes not only in your ears, but also in the eyes of everyone [*non modo in auribus vestris, sed in oculis omnium*]." ³⁵ The double contrast (you/everyone, eyes/ears) interestingly divides the roles of jury and public into those of audience and spectators, that is, literally "listeners" and "watchers," a division consistent with the public's role, considered at the beginning of the last chapter, as "eyewitness" to the proceedings. But it is also possible that the image was suggested by the fact that there were spectators out of earshot, in the famous *corona*, the "outer ring" of spectators, who followed the trial visually. Beyond even the *corona* were people not present who would learn about the trial in one way or another; "the eyes of everyone" is an image that represents both this wider knowledge and Verres' more complete humiliation. Though this diffusion would have been brought about primarily by word of mouth, Cicero prefers to speak of "eyes" because of the role of vision in shame. Perhaps, however, Cicero's ambitious claims about the universality of his audience were also encouraged by the prospect of publication. If so, the extension of spectators present to "the eyes of everyone" has the additional effect of suggesting that publication makes of reading a kind of vicarious sight – not vicarious hearing, which is what we might instead have expected. Cicero again privileges sight over hearing in another metaphor in which he promises that his case will reveal vividly the plots of Verres and his cronies: "I shall conduct this business in such a manner so that not only the ears of outside persons but even the very eyes of the *populus Romanus* will seem to be present for their secret gatherings."³⁶ Cicero's boast is not an idle one: he is twice praised by Quintilian for portraits of Verres in which the individual details "seem rather to be seen than heard."³⁷

Directly or obliquely, "the eyes of everyone" were on more than just the accused. "Now men are on watch [*nunc autem homines in speculis sunt*]," Cicero thunders in the first *actio*. "They observe how each of you conducts himself in protecting religion and preserving the laws. They see . . ."³⁸ This warning is addressed, of course, to the jury and is an unambiguous reference to calls for judicial reform. Cicero is plainer still as he continues: "This is the trial in which you will reach a verdict about the accused, and the Roman people, about you."³⁹ Along with Verres, Cicero reminds the jury, the whole senatorial order and in particular its control of the extortion court was on trial. Naturally, this would mean that the eyes most keenly fixed on the proceedings were those of the *equites* among the trial's audience, but it is interesting that Pseudo-Asconius mentions only the rural *plebs*. It may well be that many

equites, however interested in the trial, had too much to do to follow events in person, especially if they had come to the city from a distant Italian town. Other Italian *equites* would have been unable to abandon their local affairs and travel to Rome even for the census, elections, and games – not to mention the potentially lengthy affair of an extortion trial, whatever its political significance for their order. Knowing that publication of Cicero's speeches was probably inevitable, the senatorial jury would have been aware that soon it would be under the close scrutiny of even more *equites* than were present in the Forum.

This interpretation of Cicero's motives for publication, however, faces a formidable obstacle: Thomas Mitchell's devastating critique of the long-held assumptions that the prosecution of Verres played a significant role in breaking the senatorial monopoly on the juries of the *quaestiones*. Briefly, calls for reform arose from the fear of unjust convictions, not absolutions; the *Lex Aurelia*, which modified the composition of the juries, not only had the support of senators but was drafted on their initiative; the law's passage was inevitable by the time the trial began; the law was passed despite Verres' crushing defeat before a senatorial jury – strong evidence for the trial's utter irrelevance to the question of reform; Cicero's repeated claim to the contrary is a perfectly routine rhetorical strategy of inflating the importance of the jury's decision by connecting it to broader contemporary events; finally – and most importantly for our purposes – the publication of at least the speeches for the second *actio* came only after the reform was a *fait accompli*.⁴⁰ Mitchell's careful argument is to be faulted only for failing to explain adequately the emphatic way in which Cicero connects the case to the reform: in an extended passage at the end of book 5 that is largely responsible for subsequent confusion, Cicero goes so far as to claim that the real "author" of the bill was not Lucius Aurelius Cotta, after whom it was named, but rather Verres himself, whose villainy had made reform unstoppable.⁴¹ Mitchell is right that Cicero "in undertaking the prosecution . . . was not embracing any reformist movement or aligning himself with any anti-senatorial faction";⁴² he should therefore have pointed out that this is precisely what leads Cicero to claim credit, *ex post facto*, for a "reform" that was not really a source of great friction between the orders. Indeed, in the way in which he celebrates the reform, Cicero even provides himself with an excuse in the event that the senatorial order should come one day to regret its surrender of exclusive control over the juries: Cicero, after all, had allowed the last *quaestio* case tried solely by senators to vindicate the order's integrity dramatically.

The trial's ultimate irrelevance to jury reform does not mean that Cicero's warnings about "the eyes of everyone" fell on deaf ears. Even if unworried about their order, senatorial jurors had their own reputations to protect. In his closing comments for the first *actio*, Cicero explains why circumstances compel him to proceed directly to his evidence:

I decidedly will not allow that, if I were to give a full oration, an interval of forty days would pass before we would be given a response – when our accusation had already slipped into the oblivion of the distant past. I will not entrust the judgment of this case to a moment *after* this gathering of all Italy, which has come from everywhere for the sake of the elections, the games, and the census, has departed from Rome. Regarding this trial I believe that the fruit of popularity and the risk of its opposite should belong to you, that the effort and anxiety should be mine, and that the knowledge of what is done here and the memory of what was said by each individual should belong to everyone [*scientiam quid agatur, memoriamque quid a quoque dictum sit, omnium puto esse oportere*].⁴⁵

The passage's emphasis on memory is a superb example of subtle psychological manipulation by Cicero. Properly speaking, the primary risk from a long recess was that the *jury* would forget the prosecution's case. But by not explicitly saying this, and by immediately juxtaposing a discussion of the audience, Cicero gives central place to the memory of the crowd. They will remember "what was said by each individual" – a reference that could include both the advocates and the witnesses but which is vague enough to suggest even the normally silent jurors, for the crowd will remember not only what is said but also, more generally, the proceedings themselves (*quid agatur*). Not only were the jurors in plain view, but Cicero earlier had found an excuse to mention several of them by name.⁴⁴ It seems quite possible that this list served in part as a warning to any jurors who expected to slip into anonymity at the trial's conclusion: Cicero would give their names again in the speech he would publish. This concern may have weighed especially heavily on Glabrio, for Cicero mentions his name repeatedly. Furthermore, these same jurors were about to confront a vast number of written texts which inextricably implicated the name of Gaius Verres in corruption. The jury would be unable to miss the point that incriminating written texts could linger for a long time; as Cicero would later put it regarding a specific piece of evidence against Verres, "Those documents of Miletus remain, and they will remain for as long as that city exists" (*manent istae litterae, et dum erit illa civitas manebunt*).⁴⁵ To such documents Cicero would add his speeches as yet another durable record of crime – one by which the jurors too would be remembered. A vote of acquittal would forever bind their names to that of Verres and his accomplices.

Cicero's public – both listening and reading – was keeping track of the names of more than just the jurors. In court were heard the names of the witnesses, the names of the persons mentioned in their testimony, the names of persons whose letters and documents were read as evidence, and the names of persons appearing therein. Cicero carefully gives the names of many or most of these in the second *actio*, adding others still who had in

some way assisted his investigation. Both senators and *equites* provided evidence against Verres, as Cicero himself states and as Mitchell emphasizes, but it still must be said that the overwhelming majority of Roman citizens embraced by Cicero's investigation were *equites* – a fact readily explained by the financial nature of Verres' crimes. Cicero bestows on the *equites* he names honorific epithets that usually join the title *equus Romanus* with superlative adjectives describing honesty and integrity. This might have impressed the jury, but it seems more likely that the real object was to flatter the individual named and, by extension, the equestrian order. Cicero's real target was properly only a part of that order: the *publicani*, central to the administration of the provinces and, as mentioned in Chapter 2, chief among Cicero's clients in the period prior to the prosecution of Verres. Cicero uses *publicanus* and *equus Romanus* interchangeably in the speeches, sometimes with conspicuous insistence,⁴⁶ though the groups were not identical. This strongly suggests that Cicero's constant emphasis on the *equites* may be less about a struggle with senators than about division within the equestrian order itself, between the traditional *equites*, whose landed property entitled them to the "public horse," and the *publicani*. The vast subject of this division can scarcely be taken up here; the reader is referred, naturally, to E. Badian's *Publicans and Sinners*.⁴⁷ Suffice it to say that Cicero's not at all subtle suggestion that the *publicani* now largely defined the term *equus* would have pleased *publicani*, even though it described a reality that even traditional *equites* would have been forced to admit, as the interests and identities of the two groups were becoming increasingly inseparable. In short, Cicero was bolstering his support among the richest and most powerful members of the equestrian order, which would subsequently prove to be the major component of his own political power base.

It is scarcely surprising that Cicero, still at the dawn of his political career, should court equestrian support: after all, he had himself been an *equus* until only recently. But neither at this point in his career nor subsequently should we allow Cicero's solicitude toward the *equites* and his politics of *concordia ordinum* to confuse us about his far more conflicted relationship to his own status. In the Verrines, Cicero alternates his use of "we" to mean "the *equites* and I" or "you senators and I." This is, of course, a studied schizophrenia, allowing Cicero to shift his point of view according to the needs of his argument – a flexibility that may have made him ideal for the circumstances of the case. But it also reflects the genuine ambivalence and divided loyalties of a *novus homo*. That Cicero was uncomfortable with his equestrian origins is probably best demonstrated by his savagely satirical attacks on the newest arrivals to equestrian status. Gaius Claudius, the advisor of Verres with the "delicate curls and bronze skin" whom we met in Chapter 4, is an *equus*,⁴⁸ Cicero finds a pretext to note his membership in the Palatine tribe, that is, in one of the four urban tribes, in which new citizens were registered.

Cicero doubtless means to imply that Claudius had climbed to his current status from libertine origins.⁴⁹ Cicero launches a more frontal attack on another of Verres' retinue: a *scriba* named Maevius⁵⁰ who made so much money under Verres – in part by charging an illegal 1 percent “scribe fee” on public transactions – that he was able to pass the wealth requirements for membership in the equestrian order. Cicero singles out for emphasis a symbol of the man's acquisition of equestrian status: the golden ring (*anulus aureus*) which during the Republic only *equites* could wear, in this case a gift presented by Verres himself at a public meeting (*contio*), a gesture which “by its singular impudence seemed unprecedented to all Sicilians, and incredible to me.”⁵¹ Cicero probably is referring to the same scribe (and the same ring) in an earlier passage in which he alludes to the scandalous case of C. Iunius, framed for corruption by an altered juror-list forged by Verres and sealed by his scribe: “I am deterred from going into the matter,” Cicero tells Verres, “not only by your *auctoritas* and that of the jurors on that court but also by the golden ring of your scribe.”⁵²

Cicero's *ad hominem* insults are not attacks on the equestrian order itself; on the contrary, most *equites* would have been pleased by Cicero's contempt for upstarts, since permeability at the order's bottom probably produced fears of a loss of prestige. Nor is he criticizing scribes in general; at least, he takes great care to assure the powerful scribes' guild – already worried about the case's effect on their reputation and fired up against him, Cicero claims, by Hortensius – that this is not his intent, though the apology confirms that Cicero knew that his incendiary rhetoric invited generalization.⁵³ Cicero's satirical portrait of Maevius is comparable to that he provides of Timarchides (the freedman he calls a “slave king,” and so on) though he is not a *scriba* but one rank lower: an *accensus*, a personal appointee of the praetor.⁵⁴ *Scribae* and *accensi* belong more generally to the world of public servants known as *apparitores*, “the world,” in Nicholas Purcell's description, “of the social climber.”⁵⁵ Purcell is thinking of the dizzying ascents possible under the Empire, but a stepladder, at least, was already in place in the Republic, by which some, like Maevius, climbed up to the order into which Cicero had been born.⁵⁶

But Cicero was no longer an *eques*. Under the terms of the Sullan reforms, at the conclusion of his term as quaestor in 75 BCE, Cicero was enrolled automatically in the senate. What is striking about Cicero's contempt for new *equites* is the fact that he was himself a new senator. In other words, Cicero as a *novus homo* was a social climber too, or put another way still: Cicero's *latus clavus* – the wide purple stripe on his tunic that was emblematic of his senatorial status – was as bright and new as Maevius' *anulus aureus*. These potentially uncomfortable analogies lurk behind a better explanation for the publication of the undelivered speeches than any discussed thus far.

The eyes of the world

As we have seen, Cicero threatens to fix Verres' crimes "in the eyes of everyone," eyes which he then directs toward the jurors, who are to be scrutinized for any sign of corruption. But we came across "the eyes of everyone" once earlier, at the beginning of Chapter 2, in Cicero's description of his erroneous expectation of fame for his Sicilian quaestorship. One of the passages cited comes from the last book of the *Verrines*:

sic obtinui quaesturam in Sicilia provincia ut omnium oculos in me unum coniectos esse arbitrarer, ut me quaesturamque meam quasi in aliquo terrarum orbis theatro versari existimarem . . .

I had conducted my quaestorship in Sicily in such a manner that I supposed that the eyes of everyone were fixed on me and me alone, and I fancied that I had acted out my office on some stage set up for all the world to see . . .⁵⁷

This illusion unceremoniously dissolved at Puteoli, leading Cicero to vow indifference to what the public did or did not *bear* about. From that point on, remarks Cicero later in his career, "I have lived in the public eye."⁵⁸ The prosecution of Verres had thrust Cicero into the public eye as never before: on the *quaestio*'s tribunal, Cicero stood almost literally on a "stage set up for all the world to see." That his performance was a triumph is unquestionable. But what had been his role? Not that of an *orator*, as should by now be abundantly clear, but rather that of an extremely clever collector, organizer, and presenter of evidence, especially written evidence.

"A person of substance did not keep accounts, handle disbursements, or deal with the day-to-day management of property: accountants, secretaries, or agents took care of these matters."⁵⁹ Sandra Joshel is describing the more rigid divisions of labor under the Empire, but even if her words are taken as only partially true for the Republic, what must we say of a person who spent his time rifling through *other people's* accounts – not to mention their receipts, notebooks, and private correspondence? The picture does not seem much in keeping with the *dignitas* of a man who would be consul and even "father of his country." Cicero demonstrated at the trial that he possessed to a formidable degree the talents of the business-oriented equestrian order, for many of whom documents were a part of daily life. At best, Cicero stood to emerge from the trial with a reputation as an exemplary *eques*, even though he was now a senator. But by his attention to documentary details, careful to the point of being fastidious, Cicero risked worse: comparison not with the highest ranks of his former order but rather with its lowest. In other words, Cicero was able to collect and understand the evidence with which he won the case because he was an expert on matters which most people of his position left to their scribes.

Cicero included no transcripts of actual evidence in his published speeches because such material, Pseudo-Asconius understates, “was of no elegance.”⁶⁰ More was in consideration, however, than the public’s reading pleasure. Cicero’s own stake in elegance is well known to all familiar with his life, especially to readers of the correspondence with Atticus. Cicero wanted to be perceived as a man of culture and refinement, though he might have hesitated to use for himself the word *elegans*, which connoted too much of the aesthete.⁶¹ Cicero’s expertise in Greek art – later to fuel his own expensive collecting tastes – would have been abundantly clear to other persons in the know who followed the prosecution or read the speeches, though for the benefit of the wider public Cicero repeatedly feigns indifference and ignorance regarding Sicily’s artistic treasures: revealing too much interest brought the risk of being labeled a “Greekling.” Even so, Cicero cannot quite bring himself to concede to Verres the status of connoisseur, though this would have further encouraged the contempt of some conservatives. Instead, Cicero portrays Verres as a cultural boor who obsessively hoarded valuable objects, in part to dazzle friends smarter than himself. Cicero is even more disdainful of Verres’ ignorance of literature, myth, and history. Verres’ theft of statues from the temple of Apollo at Delos leads Cicero to lecture him on the well-known story of the birth of the god, along with his sister Diana, on that island:

Even if in your boyhood you did not receive the kind of humanistic education that would have enabled you to learn and comprehend what has been transmitted to us by literature, could you not even, when afterwards you came to the very spot, pick up orally what is recorded by tradition and written texts . . . ?⁶²

Later Cicero relates that Verres stole a statue of Sappho but left its base, engraved with a fine Greek epigram, “which this learned little Greek of a man, who makes subtle judgments about such things, who alone really understands them, would have carried off too – if he understood a single letter of Greek.”⁶³ All of this continues in a polemical vein Cicero had first mined in the *Divinatio*: Caecilius might have been ready to prosecute the case, Cicero instructs him with disdain, “if from your boyhood you had pursued the best kind of humanistic education, if you had learned your Greek letters at Athens, not at Lilybaeum, and your Latin ones at Rome, not in Sicily.”⁶⁴ This was another low blow by Cicero: Caecilius was the son of a Sicilian freedman.⁶⁵

Interestingly, Cicero claims that Caecilius’ lack of the humanistic education Cicero himself had enjoyed would have the specific result of leaving him unable to hold the attention of his audience. “If you want to do anything that has an effect, you must see to it not only that people listen to you, but that they listen to you willingly and eagerly,” he explains.⁶⁶ This, of course, is

the elegance for which Cicero most wanted to be appreciated, a kind not only suitable but necessary for a Roman senator: in a word, *eloquentia*.⁶⁷ That Cicero was eloquent deserves no dispute. This, however, does not change the fact that the case against Verres was not won on eloquence. Widely acclaimed for his skill at the trial's abrupt conclusion, Cicero knew he had won a battle but was losing a larger war against perceptions of his own background.⁶⁸

But Cicero also knew what he had learned at Puteoli: the Roman crowd's memory was, at least for some things, very short. And he knew one thing more, dramatically revealed by his own collection of evidence against Verres: when all else is forgotten, *litterae manent*. A brief study by Donovan Ochs has tracked divergences between the published speeches of the second *actio* and the formal rules of judicial rhetoric, but these are only window dressing to the bolder fiction that Cicero's victory had been secured by rhetorical means in the first place.⁶⁹ By publishing a record of the speech he had never delivered, Cicero did more than just redeem preparation that would otherwise have been wasted: he renegotiated the part he had just played and was to play in Roman public life, transforming the success he had won as a clever detective into worthy monuments of a Roman senator's eloquence. Perhaps, indeed, we already may speak of the eloquence of a senator who would be consul.

DECEMBER 3, 63 BCE

Convincing Rome of a conspiracy

Rome's Mulvian Bridge, which still stands over the Tiber, has long been remembered as the scene of one of history's most fateful battles, in which Constantine, fortified by the vision of a cross that promised victory, crushed the army of Maxentius and took possession of the capital he would one day abandon. But for centuries earlier, the most significant episode the bridge had seen was a nocturnal skirmish in the consulship of Marcus Tullius Cicero and Gaius Antonius. The events of that quieter clash, as well as those of the ensuing day, are the subject of this chapter. As we will see, those events temporarily placed a handful of written texts at the center of the Roman political stage. The resulting drama would test the limits of the role of writing in the Roman imagination at large.

As night fell on December 2, 63 BCE, two praetors occupied two small country houses on either end of the Mulvian Bridge.¹ They were accompanied by their own *virī fortes* from Rome, as well as a gang of young Sabine toughs in the employ of the consul Cicero. Only the praetors, however, knew the reason for the ambush, and they were acting on Cicero's meticulous instructions. Shortly before 3 a.m. a large party of travelers made its way up the Via Flaminia from Rome and began to cross the bridge. Suddenly finding themselves surrounded, they drew their swords, but the fight quickly fizzled out when the praetors emerged from the darkness on either side. The prisoners included the ambassadors and retinue of the Gallic nation of the Allobroges (who, it turns out, were complicit in the trap) and a certain T. Volturcius of Croton. Carefully following Cicero's instructions, the praetors searched the party and confiscated any letters, leaving their seals intact (*litterae, quaecumque erant in eo comitatu, integris signis praetoribus traduntur*).² These, along with the prisoners, were escorted back to Rome and turned over to Cicero, who, as the rules of his office demanded (to say nothing of justified concern for his own safety), had contented himself with awaiting the results from within the city limits. The yield was, at least, a box containing three sealed letters, plus one sealed letter carried separately. The pressure to open the letters immediately was high, but Cicero had every reason to believe he

knew what they contained, and so he banked everything on an elaborate *coup de théâtre* before the senate later in the new day.

Indeed, “theater” seems more than a metaphor for subsequent events, as Cicero acted out his command performance, with all Rome as his stage. First, the morning crowd in the Forum was startled to see the consul Cicero leading the praetor Lentulus down from the Palatine to the temple of Concord, holding him by the wrist in a well-recognized Roman gesture of violence. (Here the pantomime enacted Cicero’s superior *imperium* as consul.)³ They were followed by several other men under armed guard. At that very moment, a statue of Jupiter was being hoisted into place on the Capitoline, his face turned toward the Forum below. Cicero would later give the coincidence a divine interpretation; many since have suspected that he carefully orchestrated the whole affair. By this time, hundreds of hurriedly summoned senators were filing into the temple. Whether drawn by the likelihood of a momentous debate, threatened with fines or worse by the consul, or fearful that absence might suggest a guilty conscience, the senators turned out in greater numbers than usual.⁴

For hours, none but the senators (and, of course, Jupiter) knew exactly what was happening, though the city surely buzzed with rumor and surmise. We learn most of what we know about the drama inside the meeting the same way most Romans first did: from Cicero’s speech to the crowd later that very afternoon.⁵ The senate had been treated to a parade of witnesses and documents of the sort one normally would expect in a courtroom. The witnesses included the men captured on the Mulvian Bridge, as well as four Romans Cicero had summoned to his house early that morning: C. Cornelius Cethegus, L. Statilius, P. Gabinius Capito, and the praetor P. Cornelius Lentulus Scura.⁶ But let us listen as Cicero recounts the meeting in his own words:

I introduced Volturcius without the Gauls; on the senate’s orders I promised him state protection; I urged him to reveal what he knew without fear. As soon as he began to recover from his panic, he said that he had instructions and a letter for Catiline, advising him to employ troops of slaves and to approach the city as soon as possible with his army. A plan lay behind this: when those in Rome had set fire to the city in every quarter, just as the task had been planned and apportioned, and when they had carried out a measureless slaughter of citizens, Catiline would be on hand to intercept anyone who got away and would be able to join up with his urban commanders. Then the Gauls were brought in, who stated that an oath and a letter [*ius iurandum et litteras*] had been given to them to take back to their people by Lentulus, by Cethegus, and by Statilius. They also stated that by these same men and by L. Cassius, instructions had been given [*esse praescriptum*] for them to send cavalry

as soon as possible into Italy, where they would not be short of infantry.⁷

The Gauls concluded their testimony with the scandalous news that Lentulus had reassured them that he was the “third Cornelius,” after Cinna and Sulla, to whom power had been promised by a prophecy found in the Sibylline books and in the utterances of the soothsayers (*ex fatis Sibyllinis baruspicumque responsis*).⁸

What was the mood among the senators at this point? The revelations were damaging, but Cicero had been predicting disaster for weeks, usually on the authority of his own unspecified spies. Even those who were no friends of Catiline must have been impatient: Cicero could not convene the senate to impugn Romans, among them a consular and current praetor,⁹ on the testimony of Gauls and an obscure man from Croton. But the senators too were players in this courtroom drama, and Cicero had carefully planned their restlessness as backdrop to the stunning denouement that followed:

To be brief, citizens, I ordered that the tablets [*tabellae*] reported to have been given by each be brought forth. First I showed Cethegus his seal [*signum*]; he acknowledged it as his own. We cut the string [*linum*] and read. The message, written in his own hand [*scriptum ipsius manu*] to the senate and people of the Allobroges, was that he would do the things of which he had given confirmation to their ambassadors and that he asked them likewise to do what their ambassadors had been told to tell them.¹⁰

Cethegus, usually glib and self-assured, responded with abject silence. Cicero proceeds:

Statilius was brought in; he acknowledged his seal and handwriting; tablets more or less to the same effect were recited; he confessed. Then I showed Lentulus his tablets and asked whether or not he acknowledged his seal. He nodded. “Ah, but it is a famous seal,” I said, “a representation of your grandfather, an outstanding man, who like no one else loved his country and his citizens. Although mute, surely this representation should have called you back from so great a crime.” Letters to the senate and people of the Allobroges were read – their intent was the same. I gave him a chance to speak, if he had anything to say about these matters. And at first he offered denials, but a little later, since by now complete proof had been brought forth and made public,¹¹ he rose from his place and asked the Gauls what connection there was between them and himself and why they had come to his house, and then he asked the same of Volturcius. They responded briefly and firmly, stating on whose

instructions they had come to see him, and how many times, and they asked him if he really had not spoken to them at all about the Sibylline prophecies. Then he, all of a sudden driven mad by his crime, demonstrated how great the strength of conscience [*conscientiae vis*] is. For although he could have denied the charge, he defied everyone's expectation by suddenly confessing.¹²

Cicero is deliberately vague about the terms of this confession; probably Lentulus admitted only to some version of the statements about the Sibylline prophecies. But Cicero was saving the worst for last:

Volturcius immediately demanded that the letter which he said had been given to him by Lentulus be brought forward and read. Lentulus, although deeply shaken, acknowledged his seal and handwriting. They bore no name, but read as follows: "You will know who I am from the person I have sent to you. Continue to be a man and consider how far you have gone already. See to anything you need, and accept the support of anyone – even of the lowliest members of society."¹³

Cicero makes no comment on the letter, allowing it instead to speak for itself. But he sums up the morning's interrogations as follows:

These did indeed seem to me to be very sure arguments and evidence [*indicia*] of their crime: the tablets, the seals, the handwriting, and finally the confession of each and every man [*tabellae, signa, manus, denique unius cuiusque confessio*]. But these were surer still: their pallor, the looks in their eyes, the expressions on their faces, their silence [*color, oculi, vultus, taciturnitas*].¹⁴

Amid these rhetorical flourishes, it is easy to miss the fact that Cicero fails to include the testimony of Volturcius and the Gauls in this list: they had been introduced only to guide the subsequent reading of the confiscated letters, on which Cicero's case against the conspirators ultimately rested. And from the event we know that the letters, combined with the confessions, both silent and spoken, which their reading elicited, left even sympathetic senators unable to deny the existence of a nefarious plot. Without those letters, given the senate's clear reluctance to act against its own, the executions of two days later probably would not have happened, and Cicero's biography, to say nothing of Roman history, would have proceeded along a markedly different course.

It would be worthwhile, therefore, to review all that we can know about these remarkable letters. They were four in number: one each from Lentulus, Cethegus, and Statilius, given to the ambassadors of the Allobroges for

delivery to their people, and another letter from Lentulus, given to Volturcius for delivery to Catiline in his camp. Cicero refers to all of them collectively and to each save the last individually as *tabellae*, and we may safely assume that all four were written on wax tablets.¹⁵ All four were sealed, a procedure by which first a linen thread (*linum*, the cutting of which Cicero directly mentions in one instance) was passed through holes in the edges of the closed tablet and tied; then the sender's seal (*signum*) was pressed into wax dripped onto the knot positioned over one of the exterior faces of the tablet.¹⁶

An additional physical detail merits special comment: each of the letters had been written out by its sender. The fact that all four letters were autograph is surely exceptional, since the busy Roman seems normally to have resorted to dictation to secretaries for correspondence.¹⁷ Exceptions, however, could be made in consideration of "secrecy, decorum, convenience, or efficiency."¹⁸ Here the first two of these were certainly relevant: with Cicero's spies everywhere – even in the beds of the conspirators – one could not trust one's own slaves; furthermore, a matter of such magnitude and personal commitment required honoring the addressees with the added effort of an autograph letter, a rule of Roman etiquette we will have occasion to consider further in the next chapter. Added pressure came from the fact that each of the first three tablets was not so much a "letter" as a written version of the oath (*ius iurandum*) given to the ambassadors.¹⁹ But how could especially the Allobroges have recognized the handwriting of the conspirators? Several answers are possible: these need not have been the first letters between them; perhaps too the ambassadors had been present for the actual writing; finally, it may well be that the handwriting of even an educated Roman was at once distinguishable from that of a practiced scribe. And in any case, the gesture may have been automatic, even when the addressee was not an intimate instantly able to appreciate the politeness.

In retrospect, the seals and handwriting seem an inept blunder, especially since at least one letter's contents make clear that the author perceived the risk of interception. For reasons we will consider in a moment, Cicero's apparent account of the contents of the letters to the Allobroges cannot be taken at face value, but in the case of the letter from Lentulus to Catiline, we are doubly fortunate, for not only does Cicero quote what appears to be the entire letter instead of giving a paraphrase, but the same text is quoted by Sallust in his account of the conspiracy. This good fortune is somewhat marred by the fact that the two quotations, though nearly identical in sense, differ rather substantially in wording:

Quis sim scies ex eo quem ad te misi. cura ut vir sis et cogita quem in locum sis progressus. vide ecquid tibi iam sit necesse et cura ut omnium tibi auxilia adiungas, etiam infimorum.

(Cicero)²⁰

Qui sim ex eo quem ad te misi cognosces. fac cogites in quanta calamitate sis, et memineris te virum esse. consideres quid tuae rationes postulent. auxilium petas ab omnibus, etiam ab infumis.

(Sallust)²¹

It is generally assumed that Cicero preserves the actual text of the letter, whereas Sallust offers a reelaboration that eliminates colloquialisms and infelicities of style.²²

In any case, it is clear that Lentulus was worried that someone other than Catiline might read the letter. “You will know who I am from the person I have sent to you” – that is, from Volturcius. The cryptic opening presumably means that Lentulus could not be sure that Catiline would recognize his seal.²³ We should not make too much of Cicero’s cooing over the same seal before the senate: “a famous seal, a representation of your grandfather, an outstanding man,” and so on. Cicero is showing off his antiquarian knowledge; his purposes are rhetorical; and in any case, he already knew from Volturcius whose letter it was before he inspected the seal. All of this is important because if Lentulus could not expect Catiline to recognize his seal, then he probably could assume the same of the consul’s spies. In other words, Lentulus’ use of his seal may not have been as entirely careless as it at first seems: what he feared was unauthorized reading of his letter and the reporting of its contents to the consul; he simply did not anticipate being confronted with the actual sealed tablet as evidence in court-like proceedings before the senate the very next morning.

Lentulus’ predicament is not unlike that of Verres, who often sought to conceal his guilt by, for example, erasing an incriminating entry in his account books, never dreaming that someone would bother to assemble and analyze the evidence necessary to reveal the fraud. Again it is Cicero’s ability to synthesize and contextualize documentary evidence that is the key to his success. Indeed, in Cicero’s hands, the conspiracy’s final, irrevocable undoing arguably comes from a single guarded phrase in a single anonymous letter *etiam infimorum*, the suggestion that Catiline should make use “even of the lowliest members of society,” presumably slaves.²⁴

The presentation of written evidence was not the only documentary way in which the meeting of the senate that morning resembled a Roman court. From a speech of Cicero’s delivered several months later, we learn that the meeting saw what must have been at the time a startling innovation:

And so once the witnesses [*indices*] had been brought into the senate, I arranged for certain senators to transcribe the witnesses’ every statement, every question, every response. Stop and consider what men I chose. Not only were they men of the highest virtue and trustworthiness – the sort of quality which one could already count on to be at its height in the senate – but in particular they were,

I knew, men who by virtue of their memory, skill, experience, and writing speed [*memoria scientia consuetudine et celeritate scribendi*] might most easily keep up with what was said: C. Coscius, who was then praetor, M. Messalla, then candidate for the praetorship, P. Nigidius, and App. Claudius.²⁵

The regular recording and publication of minutes of meetings of the senate was still a few years away.²⁶ Individual members might take notes for their own purposes and for distribution to absent intimates, but the only records of any official standing seems to have been the *commentarii* of the consul as presiding magistrate (presumably kept by a scribe or scribes in his attendance), which seem to have had a vague status as *tabulae publicae*, though they were not deposited in the Aerarium but were instead kept by the consul in his own house.²⁷ In effect, Cicero asked the four senators to keep his *commentarius* for him.

Almost certainly these are the same men mentioned by Plutarch in his description of the speech of Cato during the meeting of the senate on December 5 to decide the conspirators' fate:

This is said to have been the only one of Cato's speeches that was preserved, for the consul Cicero had previously taught, to persons who excelled in the quickness of their writing, shorthand-symbols [*σημεῖα*] which had, in a few short strokes, the force of multiple letters, and he had scattered these individuals, each in a different place, throughout the senate-house. For up to that point they did not employ or even have those people we call shorthand-writers [*σημειογράφοι*].²⁸

Other evidence links tachygraphy to the name of Cicero's secretary, Tiro, who, according to Isidore of Seville, was the first person in Rome to establish a guide to the use of *notae*, though his list included only symbols for prefixes and prepositions.²⁹ Presumably some version of Tiro's method was taught to the newly deputized senatorial secretaries, though it does not seem likely that the system was invented *ex nihilo* for the meeting. Rather, Tiro must have developed his technique over many years of struggling to keep up with his prolific master in public oration and private dictation. Whether Cicero had a hand in the development of the method or was merely the passive beneficiary of Tiro's efforts is unclear, but it is scarcely surprising that the innovation emerged from their relationship.

On December 3, Cicero's surprise maneuver must have been quite unnerving for the men called for questioning, who found that their every word, whether spoken or read from their letters, was being committed to record. From the senators' point of view, the effect must have been stranger still on December 5, when, Plutarch reports, Cicero distributed

his stenographers among them so that one of the four might be near any senator who rose to speak. The effect was not soon forgotten by one of the men whose words were recorded, Julius Caesar, who, in his first consulship four years later, institutionalized the recording and publication of the proceedings of the senate.³⁰ Of course, Caesar would thereby seek to undermine the senate's autonomy and authority. We should not assume that such a motivation was entirely alien to Cicero's thinking in 63 BCE. It is sometimes forgotten that Cicero had insisted (however implausibly) on his fitness for the title of *popularis* during the debate over agrarian legislation early in his consulship.³¹ Ultimately, Cicero did not really want popular encroachment on the authority of the senate, but this did not keep him from putting the senate under the public eye when it suited his purposes. In general, Cicero's lofty sentiments about the solemn responsibilities of the senate too often are read as simply conservative when, in fact, there probably was nothing the senate feared more than being forced to live up to the virtues it supposedly embodied. In the trial of Verres, Cicero had warned a senatorial jury that the "eyes of everyone" were watching their every move; on December 3 and 5, the senators must have wondered whether the same critical crowd would be listening to their every word. As with Verres, Cicero counted on concern about popular perception to induce the senate to forgo its usual instinct to protect its own.

Nevertheless, such considerations probably were secondary in Cicero's mind. His principal reason for employing trustworthy senators to compile an accurate transcript of the senate's transactions was his own self-protection. Already from his guarded "invitation" to Catiline on November 8 to go voluntarily into exile, Cicero was well aware of the political and legal predicaments into which action against the conspiracy placed him. (Thus on December 5, Cicero would strike an ostensibly neutral position, declining to endorse the proposed execution of the conspirators.) Cicero was sure that the evidence he was able to present on December 3 would dispel all doubt among the senators present about the reality of the conspiracy, but he could not be sure that the same evidence would not be forgotten or misrepresented subsequently. A transcript of the evidence would prove the conspirators' guilt to anyone who might question it and thus protect Cicero from recrimination (or so it seemed).

In the aftermath of the meeting, Cicero would take an extraordinary step which he presumably had contemplated when he first planned for the proceedings to be recorded:

What did I do? I knew that the evidence [*indicium*] was considered to have been recorded in official documents [*relatum in tabulas publicas*] but that these particular official documents by established custom [*more maiorum*] were kept in private possession [*privata custodia*]. Nevertheless, I did not hide them away, I did not keep them at

home, but instead I ordered that they immediately be transcribed by every available scribe [*describi ab omnibus librariis*], distributed everywhere [*dividi passim*], and then publicly broadcast to the Roman people [*pervulgari atque edi populo Romano*]. Distributed throughout all of Italy, sent out to every province – I wanted no one to be left ignorant of this evidence out of which deliverance was conferred on all. I therefore insist that of all the places on earth in which the name of the Roman people is known, there is none which a full copy of this evidence [*perscriptum hoc indicium*] did not reach.³²

It should not be supposed that Cicero here describes an impossible feat: the senate and consuls must have had a somewhat regular need to send legal and military announcements to all corners of the empire. What is exceptional is the content of Cicero's communiqué.

Cicero's comments about the four senators he chose as secretaries and the eventual destinations of their transcript come from his defense several months later of Publius Cornelius Sulla, accused of involvement in the very conspiracies Cicero had crushed. Among other things, the prosecution had suggested that Sulla had been implicated by the evidence given before the senate on December 3, but that Cicero had suppressed this revelation in the transcript. The allegation seems to have been part of a wide-ranging and fairly inconsistent set of insinuations about Cicero. Cicero's spirited self-defense rings sincere; indeed, it is difficult to imagine why he would have taken the extraordinary precautions he did unless it was precisely to ensure an unimpeachable record of events:³³

In my arrangements, at a moment of such upheaval, a moment that was swift to come and swift to pass, I had foresight of many things, not by my own efforts, but by virtue of what I have said was a prophetic vision. And so I took precautions so that no one could remember only so much as he wanted about the danger faced by the republic or by any individual, and next so that no one would ever be authorized to criticize that evidence or allege that it was trusted without careful consideration, and finally so that nothing more would be sought from me or from my notebooks [*ex meis commentariis*], lest either my forgetfulness or my memory seem excessive, and finally lest my carelessness be thought a sign of corruption or my carefulness a sign of cruelty.³⁴

Cicero goes on to claim that the prosecutor Torquatus, who was present at the meeting on December 3, could have inspected the four transcripts prior to their compilation into a single *codex*, if he had so desired.³⁵

Before we return to the events of December 3, it might be useful to try to imagine what people in towns near and far would have thought of the

transcript of that morning's revelations, read to them on the consul's order. The evidence was not as undigested as we might suppose: presumably it appeared in the same order in which it had been presented, and presumably this order is followed by Cicero in his surviving speech reviewing the senate's meeting for the crowd in the Forum later that afternoon. Cicero began with the damaging testimony of his witnesses, who, however, were not of a status to win instant trust, then provided the documentary evidence, which was of greater authority but which by its guarded language would have been difficult to decipher without the testimony given just before, and then finally led his listeners to an unambiguous interpretation of the letter of Lentulus, which had been written to be incomprehensible to anyone but Catiline. There is also every reason to suppose that Cicero at least occasionally made explanatory comments to the senate during the meeting, including an account of the seizure of the letters, and that these were included in the transcript, which still could be referred to simply as a record of the evidence (*indicium*) without gross misrepresentation. Still, for many reasons it is difficult to imagine that those who heard the evidence read by their town's crier understood its import as fully and as readily as had the senators present. Probably Cicero was not naive enough to suppose that the transcript would offer anyone a true chance to weigh the evidence and reach an inevitable conclusion of guilt. Rather he must somewhat more cynically have hoped that the dissemination of the transcript would principally serve to convince the somewhat bewildered masses that considerable evidence regarding the matter existed, that it duly and solemnly had been set down in careful records, and that the consul had found it weighty enough to merit the extraordinary step of sharing it with the world. At the risk of attributing to Cicero motives familiar to us from the demagoguery of our own time, we may suppose that he counted on an effect more from phrases like the *etiam infmorum* of Lentulus' letter than from any synthesis of the ensemble. In any case, Cicero's strategy presupposed that distant listeners were ready to trust a written report from Rome and prepared to believe that a man's guilt could be established by the letters he had written, attributes we might not immediately expect from the "oral culture" sometimes said (with growing insistence in recent decades) to characterize the ancient world.

Cicero had far greater latitude to influence the interpretation of the evidence when he spoke from the Rostra on the afternoon of December 3. Indeed, the careful reader detects a number of probable manipulations of the truth, such as Cicero's repeated assertions that each conspirator, confronted with the incriminating evidence against him, subsequently "confessed." Cicero never reports the details of these "confessions"; probably most or all were far more limited than Cicero led the crowd to suppose; otherwise he surely would have provided some of the self-incriminating words.³⁶ Note, however, that Cicero misleads only by suggestion; here and generally, he takes almost maniacal legalistic care to avoid expressing a literal untruth.

Such care is especially noteworthy precisely in Cicero's rehearsal of the documentary evidence. In a passage we already have considered, Cicero reports the testimony of Volturcius regarding Lentulus' letter to Catiline, which would not be read to the senate (and thus quoted to the crowd) until after the testimony of Lentulus himself:

I introduced Volturcius without the Gauls; on the senate's orders I promised him state protection; I urged him to reveal what he knew without fear. As soon as he began to recover from his panic, he said that he had instructions [*mandata*] and a letter [*litterae*] for Catiline, advising him to employ troops of slaves and to approach the city as soon as possible with his army. A plan lay behind this: when those in Rome had set fire to the city in every quarter, just as the task had been planned and apportioned [*descriptum*], and when they had carried out a measureless slaughter of citizens, Catiline would be on hand to intercept anyone who got away and would be able to join up with his urban commanders.³⁷

The letter, as later quoted by Cicero (and Sallust), does indeed urge Catiline to make use "even of the lowliest members of society,"³⁸ but Volturcius' version specifies that this means "troops of slaves," and adds the advice that Catiline "approach the city as soon as possible with his army." Now it is scarcely possible that Cicero would later choose to quote from the letter an excerpt that does not include these damning details. Part of the problem is that Volturcius is paraphrasing (and, to make matters worse, Cicero in turn is paraphrasing Volturcius, expanding his statement with explanatory glosses). Note, however, that Cicero does not say that this paraphrase is of the letter alone; rather, Volturcius reports the purport of the *mandata* (instructions) as well as the *litterae* (letter) he has been asked to deliver to Catiline. *Mandata* can be written (indeed, Cicero probably counts on this to confuse his listeners further), but in this case they surely designate oral instructions which Lentulus was circumspect enough not to trust to writing. Daring grammatical acrobatics follow. Cicero cites Volturcius citing Lentulus' letter not, as one would expect, by a series of indirect statements but instead by two *ut*-clauses to be construed with *mandata et litteras* (the sense being *Lentulus mandavit ut . . .*). This is followed by a third *ut*-clause that reports the plan to burn the city and slaughter countless citizens. But before this Cicero inserts the phrase *id autem eo consilio* which makes the final *ut* depend on *consilio*. Thus what appears to be a third instruction is only the "plan" that Lentulus has in mind – and probably this represents not even the speculation of the only apparently quoted Volturcius, but rather that of Cicero himself. Finally, Cicero's use of a compound of *scribere* (*descriptum*) to indicate the "apportionment" of the city doubtless means to conjure in the minds of his listeners the specter of a written plan, perhaps even a map.³⁹ And Cicero employs similar

tactics in reporting the testimony of the Gauls, including the use of another compound of *scribere* (*praescribere*) to imply that all of the “instructions” which the conspirators had given the ambassadors were contained in the confiscated letters; it is instead likely that most were given orally.

Cicero had been so fully successful in convincing the senate of the conspirators’ guilt that we scarcely can suppose that, later that same day, he began to entertain doubts about the conclusiveness of his evidence. Rather, whichever of Cicero’s exaggerations in the Forum cannot be attributed to rhetorical embellishment must represent an attempt to simplify the evidence for the crowd’s consumption. Such simplification need not primarily impugn the crowd’s intelligence: the setting was different; Cicero was summarizing what probably had taken hours to unfold; and his audience did not have the senators’ opportunity to witness the confusion produced by the evidence in the faces of the conspirators. All the same, the body of evidence was a complex and interconnected ensemble of which no single element was fully comprehensible in isolation. Cicero may well have anticipated that the crowd, unlike the senate, would not have possessed the time, nor the will, nor the legalistic mindset (with some noteworthy exceptions, discussed below) to parse the whole and extract its import by logical inference. And so Cicero sought to simplify matters for his listeners in the Forum by exaggerating the directness with which the conspiracy had been revealed by the confiscated letters.

Cicero’s emphasis on his documentary evidence in the afternoon speech – including his dramatic retelling of the seizure of the letters, his description of his own resistance to the urging of friends to open the letters before the senate met, the attention lavished on the physical tablets and the breaking of their seals, the climactic reading to the crowd of the letter of Lentulus, and finally the very exaggerations we have just considered – presupposes that the crowd was inclined to recognize the authority of the written word, even in a matter as grave as a nefarious plot against the state. And so we ask the following question: when Cicero looked out from the Rostra, did he see the “oral society” described in recent works on ancient literacy and the like? Of course, neither this nor, indeed, any other Roman crowd was quite the undifferentiated herd that is sometimes imagined. Pressed closest to the Rostra were, no doubt, the *equites* who continued to stand by Cicero throughout the tumultuous events of his consulship, not only as supporters but even as bodyguards against the conspiracy’s designs on his life. By necessity most *equites*, especially those who lived or did business in Rome, were well versed in the documentary culture of Roman law and commerce. Doubtless also present were the *scribae* scheduled to be assigned to Rome’s incoming magistrates during the casting of lots two days later in the Aerarium (an event they would temporarily abandon to crowd the entrance to the temple of Concord next door, hoping to catch a glimpse of the senate’s deliberations on the conspirators’ fates).

Watching from, perhaps, somewhat farther off were the masses of the *plebs urbana*. If Cicero was counting on lasting plebeian support for the measures he and the senate were about to take, then he was, of course, myopic, since the *plebs* – or at least its tribunes – would soon turn against him. Nevertheless, there is no hint in the sources that any of Cicero's vociferous critics in the coming weeks sought to impugn his use of documentary evidence,⁴⁰ indeed, on December 5, Julius Caesar, who spoke very much for the *plebs* to hear, acknowledged that the conspirators' guilt had been proven incontrovertibly, even as he argued for clemency. However much or little the everyday life of the Roman plebeian was affected by written texts, December 3 was not the first day he had met with them in the Forum. Indeed, Cicero that afternoon addressed a crowd that was, to no small degree, of his own making – prepared by years of his courtroom arguments to believe that, sometimes, the truth is to be sought in tablets.

But there is a deeper story to be told here, and to discover it, let us turn to an event apparently only tangentially related to the rest of the day's events. Two years earlier, the Capitol had been ravaged by a series of lightning strikes, damaging statues of gods and men and liquefying bronze inscriptions of the laws.⁴¹ Among the toppled statues was one of Jupiter, standing on a column and facing west, toward the Janiculum. The *haruspices* advised that, in order to avoid dire consequences for the state, this ruined statue of Jupiter should be replaced with a larger one, situated on a higher spot and, most importantly, turned around to face the sun as it rose over the Forum below. Contracts were given for this important job, but, Rome being Rome, the contractors fell behind schedule, and at the beginning of December, 63 BCE, the monument was still *chiuso per restauro*. Then, on the morning of December 3, even as Cicero was conducting Lentulus and the other conspirators to the temple of Concord, the statue suddenly was lifted into place. Many years later, Cicero would reject the explanation which he himself publicly favored on December 3 – namely, that the timely appearance of the statue was divinely inspired. Rebuking his credulous brother in the dialogue that forms the *De divinatione*, Cicero claims that the statue's erection at that very moment had been mere coincidence, but he makes even this suggestion with a bemused smugness that implies he knows better. Not surprisingly, most now regard the statue as a prop in an elaborate stunt orchestrated by the consul and his friends.

Two recent and influential reconstructions of Cicero's Rome, Fergus Millar's *The Crowd in Rome in the Late Republic* (Ann Arbor, 1998) and Ann Vasaly's *Representations: Images of the World in Ciceronian Oratory* (Berkeley, 1993), single out the episode of the statue as evidence of the theatricality of the spaces in which Rome came together as a "face-to-face society." Vasaly, in particular, in her reading of the Third Catilinarian, follows Cicero in emphasizing both the crowd's ability to see Jupiter looming over them and Jupiter's ability to supervise all that happened below. Both

Vasaly and Millar ultimately stress how the statue offered a metaphor for the supervisory role of the gods in Roman affairs, a role simultaneously evidenced and enacted by their monuments in and around the Forum. But a more pressing metaphor may be found in the way in which Cicero's emphasis on vision contrasts with the behind-the-scenes machinations of the conspirators, now seen in the clear light of day. Cicero would further underscore this in the poem he later wrote about his consulship, claiming that the *haruspices* had promised "that the people and the sacred senate would be able to see hidden undertakings, if, turned toward the sunrise, the image of the god might look upon the meeting places of the senators and of the people" (*fore ut occultos populus sanctusque senatus/cernere conatus posset si solis ad ortum/conversa inde patrum sedes populique videret*).⁴² At the outset of his speech that afternoon, Cicero promised the crowd to relate all things "which were illuminated, revealed, uncovered [*illustrata, patefacta, comperta*] in the senate through my efforts," an echo of the boast he had made already in the First Catilinarian a month before: "I have uncovered everything [*comperi omnia*]." ⁴³ Naturally, if Jupiter's vision stands for that of the senate and the people, then it stands above all for the watchfulness of their diligent consul. Not only by seeing but also by being seen, both Jupiter and Cicero embody the function of the plain view in safeguarding the Roman republic, a matter we have had occasion to consider in previous chapters.

Nevertheless, no description of the role played by the statue of Jupiter that day in the theater that was the Roman Forum can be complete without a crucial detail. When Jupiter looked down on the temple of Concord that morning, he saw not only a face-to-face society, populated by the stern face of the consul, the astonished faces of the senators, the pale faces of the conspirators, the curious faces of the crowd that waited outside: he also saw a series of tablets in which the secret plot was at last revealed. It has been pointed out that Cicero's persistent use of *signum* (as opposed, for example, to *simulacrum*) to designate the statue of Jupiter allows *signum Iovis* to form a pendant to the *signa* that sealed the tablets of the conspirators.⁴⁴ The two uses of *signum* thus trace a precise line of sight: on December 3, all-seeing Jupiter was a reader.

Cicero's *signum* looking at *signa* may have even broader reference. First, the statue must be situated within the semiotic practices of Roman divination: *signa* of this sort include the portents which had occasioned the erection of the new statue in the first place, other prodigies which apparently occurred before the outbreak of the conspiracy, and even the erection of the *signum Iovis* as itself a *signum* of the conspiracy's exposure.⁴⁵ Less obviously semiotic, but no less concerned with signs, is the intricate symbolism of Rome itself, especially of the Forum and its monuments.⁴⁶ Temples were perhaps the most exemplary monuments in this regard, and they (and the gods whose *signa* they housed and whose names were inscribed on their entablatures) often were invoked by speakers in the Forum. But such invocations are

only the simplest parts of Cicero's elaborate topographical narratives in the Catilinarian orations, subject of an entire chapter by Vasaly (and of briefer remarks by Millar). Let us pause to point out just one notorious detail: on December 3 and 5, Cicero summoned the senate to meet in the temple of Concord – scarcely a casual choice by the man for whom the suppression of the conspiracy would be the greatest triumph of his efforts to ally the interests of all Romans (especially of senators and *equites*) under the slogan *concordia ordinum*.

The semiotic texture of ancient life is the subject of Giovanni Manetti's *Le teorie del segno nell'antichità classica* (Milano, 1987).⁴⁷ For Rome, Manetti places special emphasis on the semiotic strategies of judicial rhetoric.⁴⁸ This necessarily was concerned with the decipherment of those signs of crime we tend to call “clues”; ancient lists include things like the bloodstains on the clothes of a murderer or the tell-tale swelling of a corpse produced by poison. A number of terms were applied to such clues; among these is *signum*, for which Cicero provides a definition in the *De inventione*, the early treatise he compiled from the notes of his own rhetorical education:

A *signum* is something that strikes one of our senses and signifies something which seems derived from the matter in question, which was there before or arose during commission of the crime or which was its consequence, and which nevertheless lacks witnesses and weightier corroboration. Examples include blood, flight, pallor, dust, and the like.⁴⁹

Pallor belongs to a class of signs which the probably contemporary writer of the anonymous *Rhetorica ad Herennium* makes the object of *consecutio*, arguments about clues that are the “consequence” of a crime but which require the mediation of, for example, conscience:

The accuser will say, if possible, that the defendant, when approached, blushed, turned pale, stammered, spoke inconsistently, fainted, made promises [*erubisse, expalluisse, titubasse, inconstanter locutum esse*] – all of which are signs of conscience [*signa conscientiae*].⁵⁰

If this sounds familiar, it probably is because we encountered just such a list in the Third Catilinarian:

These did indeed seem to me to be very sure arguments and evidence [*indicia*] of their crime: the tablets, the seals, the handwriting, and finally the confession of each and every man [*tabellae, signa, manus, denique unius cuiusque confessio*]. But these were surer still: their pallor, the looks in their eyes, the expressions on their faces, their silence [*color, oculi, vultus, taciturnitas*].⁵¹

This list is very revealing. At the end are four *signa conscientiae* (*color, oculi, vultus, taciturnitas*) much like those listed in the *Rhetorica*. But at the beginning, Cicero introduces three signs (*tabellae, signa, manus*) in the form of documents, which do not figure in the semiotic passages of the *Rhetorica* and the *De inventione*. Mediating the two groups is *confessio*, which is, of course, more than a mere sign of guilt and which thus seems somewhat out of place in a list of evidence. But its role here lies precisely in its ability to embody a crucial characteristic taken from each of the two groups: like the final group, it demonstrates – as Cicero himself describes it regarding Lentulus – the *conscientiae vis*; like the first group, it is a text, an especially evident characteristic in this case, since each confession followed the reading of the letters and may have amounted to little more than an acknowledgment of what they contained. This mediation sets up other connections, most notably the intrusion of an anatomical term, *manus*, into the first group, connecting it to the *color, oculi, vultus* of the second. In short, Cicero's list enacts the absorption of documentary evidence into the pre-existing logic of the judicial sign. The tablets not only bear *signa*: they are themselves *signa*. Whether or not this fusion first occurred on December 3, it represents a noteworthy change in Cicero's thinking from the days of his rhetorical training. In the *Partitiones oratoriae*, composed *after* Cicero's consulship, the list of signs ends with a significant addition:

... such as a weapon, a footprint, a bloodstain, the seizure of something that appears to be stolen, contradictory answers, hesitation in answering, stammering, being seen with a suspicious individual, being seen at the scene of the crime, pallor, trembling, *or anything written that either is sealed or was taken as a deposition*.⁵²

Cicero addresses the treatise to his son, expanding here and there what he himself learned in school with the lessons of his own subsequent experience.

The historical relationship of what we might call Roman semiotic culture to the rise of Roman written culture would be a fascinating object of study. One might begin by observing that Rome had been pervaded by signs from its supposed origin, when Romulus and Remus stood on its hills, counting birds. Later, the Sibyl stood before King Tarquin, counting down her books, full of cryptic guidance for the interpretation of baffling portents – signs about signs. Finally, on the morning of December 3, the consul Cicero stood before the senate, counting tablets – and carefully interpreting texts that at first seemed as cryptic as those in the Sibylline books. For some, perhaps many, in the crowd Cicero addressed that afternoon, those tablets would have been illegible, but their import was still comprehensible in the Roman language of signs. And for audiences both literate and illiterate, Cicero's deft interpretations of written documents must have seemed as divinely inspired as those of an augur explaining the paths of birds.

Of course, telling stories that begin in a primitive and legendary past has well-known dangers. And certainly we should note that the fanciful sketch just offered reverses the direction of the changes we have seen in the rhetorical handbooks. Written texts had long been a part of legal training and so figure prominently in both the *De inventione* and the *Rhetorica*, chiefly under the heading of *controversia in scripto* (“dispute regarding a written text”), which usually involved the elaborate parsing of a law or contract. What is new in the *Partitiones oratoriae* is not that semiotics has “risen” to the level of writing but rather something like the reverse: written texts, previously subject only to the rigorous linguistic analysis of the *controversia in scripto* (surely comprehensible only to a legally trained elite – though this may have included, to varying degrees, most senators and *equites*), make themselves available to a more general discourse of signs. (We might say that semantics is traded for semiotics.) This availability may have had many consequences, but potentially the most significant was for those Romans whose daily lives were untouched by writing. Of course, the illiterate Roman still could not make Ciceronian arguments about documents, nor, returning to our divinatory metaphor, could the uninitiated practice augury – but all knew that the augur was watching birds; all probably knew something about how and why; and all (or nearly all) were prepared to take what he said about what he saw seriously. Another metaphor: when lightning struck and melted a bronze legal inscription, more Romans understood the significance of the lightning than could have read the text of the law itself. Probably we can imagine that the intact tablet of the law had a status somewhere between these two extremes, both symbolic as object and readable (for some) as text. On December 3, Cicero populated just this sort of intermediate space with the tablets of the conspirators and with listeners of diverse social status. Naturally, to think of semiotics as the poor man’s literacy is too simplistic, especially since Cicero doubtless expected that his presentation of the letters as *signa* and even his divinatory overtones would capture the imaginations even of literate elites. Instead, let us say that Cicero exploits the *signa* of the confiscated letters as a point of contact between a discourse of writing (of special importance to the literate but not, as we have seen in previous chapters, unknown to the wider crowd) and a discourse of signs (known to all Romans but still subject to expert mediation). The result was a mutually confirming dialectic of written and unwritten signs. Or, to put it another way, Cicero on December 3 won *concordia ordinum* through a carefully crafted *concordia signorum*.

Four tablets had been placed in the consul’s eager hands just before dawn; night fell on a city which those same four tablets had shaken to its core. The day’s events reveal, among other things, why we cannot use literacy as the vanishing point of our reconstructions of the role of writing in Roman life. In more ways than one, estimating the importance of Roman writing

by counting literate Romans is like estimating the importance of augury by counting augurs. It would be better to speak of a society in which an uneven distribution of skills produced complex situations of mediation, including mediation both of and by the written word – and these would include not only mediation by the literate for the illiterate, but also by lawyers for those without legal training, by accountants for those without arithmetic, by fast writers for slow writers, and so on. Cicero, as I have endeavored to show throughout this book so far, acquired unusual skill in nearly every use of writing – except perhaps poetry, and he never stopped trying even there. (Alas, Cicero would celebrate the suppression of the conspiracy in a poem that arguably was Latin literature's greatest flop.)

Perhaps the day's mediations can best be understood according to the rules of the old elite game of patronage, by which one's success in Rome depended in good measure on one's ability to make one's resources, usually inherited financial and political capital, available to others. Cicero's wealth and connections paled beside those of his well-born peers, whom he nevertheless outshone in various talents. But Cicero was unwilling to content himself with the status of a *patronus* in the low sense of a professional forensic pleader and sought instead to bestow his talents in grand gestures of *noblesse oblige*. On December 3, he reached the hard-sought summit of his esteem “in the eyes of everyone” by, in effect, *becoming* the eyes of everyone. Cicero was many things that day: detective, lawyer, semiotician, showman, and, of course, consul and orator. But his greatest role was the one he made basic to the others: that of reader, peering deep into a plot that had left its unmistakable signs in thin layers of wax.

THE HAND OF A SECRETARY

Writing after the Ides of March

On the night of March 15, 44 BCE, Mark Antony obtained from Calpurnia documents that had belonged to her slain husband.¹ Modern scholars have tended to refer to these vaguely and anachronistically as Caesar's "papers," but their inestimable importance to our present investigation requires us to peer at them more closely. Fortunately, the ancient sources and subsequent events reveal fairly clearly that the bulk or entirety of what Antony carried away consisted of the papyrus rolls of the dead dictator's *commentarii*.² Any magistrate might keep *commentarii*, "notebooks" containing a continuous record of the activities of his office; in the last chapter, we encountered Cicero's own consular *commentarii*, and earlier we noted Cicero's claim to have consulted a *commentarius* from Verres' term as governor of Sicily.³ Indeed, the closest model for Caesar's record was probably the *commentarius* of a provincial governor,⁴ whose power – like Caesar's in Rome – was both miscellaneous and, for many or most practical purposes, absolute. In effect, Calpurnia handed over to Antony the minutes of Caesar's tyranny. These rolls, safely spirited away to Antony's house long before Caesar was eulogized and burned, would soon plunge Rome into a documentary crisis of unprecedented magnitude.

On the morning of March 17, Antony as the sole surviving consul convened the senate in the temple of Tellus.⁵ The ostensible reason for the choice of location was the safety offered by the temple's proximity to Antony's own house, in the Carinae district of Rome.⁶ But the temple had an even nearer neighbor: the house bought by Cicero's father as the family's outpost in Rome, in which Cicero himself had lived until he moved to the more prestigious Palatine, turning the family house over to his brother Quintus; later, Quintus too had moved out and put the old place up for rent.⁷ The house was connected to the precinct, and Cicero himself paid for repairs to the temple, even erecting a statue of Quintus at the foot of its steps.⁸ Perhaps Antony reckoned that, in a holy place under the patronage of the Cicerones, his own life would be safe from any further designs of Caesar's foes, but given that Caesar was struck down beneath the statue of Pompey, one wonders why it did not occur to Antony that he might instead be inviting another stroke of

poetic justice. After all, Brutus' first recorded utterance after the assassination was a cry to the crowd of a single name, capable by itself – so he thought – of explaining his deed: "Cicero!"⁹

As the senators took their seats, they were confronted by what may have been another reason for the choice of site: a wall of the temple was adorned with a painted map of the Italian peninsula, offering, as it were, a road map of the crisis looming on the horizon.¹⁰ Already, surely, news of the assassination had been carried down the Via Latina to Caesar's veteran colonies at Casilinum, Capua, and Capatia. Far closer to home were the numerous veterans still camped in tents in the streets of Rome, awaiting their own colonial settlement.¹¹ Caesar's veterans might be expected to endure the violent death of their commander but not any erosion of his promises to them. And the veterans were only part of the general unrest in the city, fast coming to a boil. Against such a backdrop, the senators' thoughts turned to containment. And in surroundings that echoed the prestige he had won for himself and for his family's name, Cicero struck a conciliatory tone, as did Antony. The senate declared an amnesty for the assassins but also adopted a blanket *fiat* of the Caesarean *status quo*. In Appian's fanciful reconstruction of the scene, republican senators agree to the compromise after Antony wryly reminds them that many of them in fact owe their present positions to Caesar's favors.¹²

What the senate seems to have decreed was that Caesar's *acta* should be ratified. The phrase *acta Caesaris* usually is translated without comment as "Caesar's acts"; in fact, this virtually unprecedented use of the participle *actum* in a legal context deserves closer scrutiny.¹³ The English word "act" implies legislation, but there is no evidence for such a connotation for *actum* in Caesar's day, and the phrase *acta Caesaris* must have come closer to meaning "Caesar's official actions," with even the "official" of this translation perhaps overstating the phrase's legal clarity.¹⁴ Why did the senate choose such a vague and non-technical term? It is hard to see how they had any choice. The only real alternative was *edicta*, the official decrees usually of praetors but in theory of any high magistrate. But this term risked being too narrow since few of Caesar's official actions included the publication customary for an *edictum*.¹⁵ Additionally, since Caesar presumably would have issued *edicta* as dictator, some senators may have feared that recognizing Caesar's edictal authority would be tantamount to recognizing the legitimacy of his dictatorship. Broadly speaking, justification of his assassination presupposed the contrary position.

We do not know whether Caesar himself ever referred to the farrago of decrees, decisions, and promises recorded in his *commentarii* as his *acta*. In Caesar's lifetime, there may well never have been any reason to designate this miscellany by a single term. But at the meeting of the senate two days after the assassination, Antony must have realized (perhaps on the advice of

Calpurnia and others) that ratification of Caesar's *acta* meant, in effect, ratification of the contents of Caesar's *commentarii*, now in Antony's possession.¹⁶

Caesar's assassination had come just weeks before a period of the year which most well-to-do Romans typically spent on holiday at their seaside resorts.¹⁷ Already on March 17, confronted with the map of Italy that hung on the wall of the temple of Tellus, many senators must have reflected that this was an especially useful moment to put a safe distance between themselves and the volatile situation at Rome, leaving the mob to its own devices and the consul Antony to do what he could. In the coming weeks, the Rome that had just been deprived of its dictator was emptied as well of its leading citizens. In the aftermath of Caesar's funeral, even the conspirators decided to pack their bags; Brutus and Cassius thus abandoned not only Rome but also their praetorial posts. But the scattering of the players in the still-unfolding drama did not put them out of touch with one another; rather, their very dispersal in combination with the momentousness of current events served to electrify the Roman epistolary habit. The letters that crisscrossed the Italian peninsula in the coming months became by necessity the crucial fabric of Roman political life.

Of course, most of what we know about those letters comes from Cicero, whose own letters account for the bulk (but not the entirety) of what survives among his collected correspondence. On April 7, Cicero himself left Rome, taking leave of Atticus that morning and breaking his journey a short distance from the city, at the house of C. Matius, an irritating friend who remained an ardent Caesarean. Already on that very day, Cicero could write Atticus in order to remind him to keep sending updates from Rome: "*Please* don't be lazy about writing me with any news (I'm expecting plenty) . . . Write whatever comes up – no matter how big or small. I won't pause at all in writing you."¹⁸ Apparently at least one letter from Atticus was already on its way; another would arrive before the day was over.¹⁹ Requests that Atticus write soon and often, and reciprocal promises to do the same, appear in Cicero's earliest surviving letters to his friend, written in 68 BCE. But the *topos* becomes quite insistent in the letters from the summer of 44, with the sheer variety of Cicero's wording suggesting something more than a polite convention. Examples continue in the letters Cicero wrote during the two-day journey to Puteoli:

If you have any news (I anticipate some every day), send it to me immediately – if there's no news, then at any rate stick to our habit of not allowing any interruption in our notes. I for one won't be guilty of a pause.²⁰

Think over these matters and whatever else pertains to me, as you always do, and write to me either something pertinent or – if there is nothing – whatever comes to mind.²¹

Sometimes Cicero was more specific about the “news” he wanted:

Be sure always to write me everything regarding Brutus: where he is, what he is thinking about . . .²²

If you know what young Quintus is doing (and you have not left Rome yet), please write me to let me know – and by God send anything else you know. I take tremendous pleasure in a letter from you.²³

There were, of course, many practical reasons why Cicero needed to remain informed about events in Rome, but his rather jarring reference to “pleasure” in the last line (*vehementer delector tuis litteris*) makes clear that his need for letters and the news they bore was more than just utilitarian.

From the period stretching from Cicero’s departure from Rome in April to his return at the end of August, sixty-two letters to Atticus survive, and we may assume more or less the same number were written in reply. Except for a long stretch while Cicero was making his way from Rhegium, through Sicily, to Leucopetra, their correspondence seldom shows a hiatus of more than a day or two; indeed, Cicero’s usual practice in this period was to write every day. Of course, Cicero wrote not only to Atticus: the correspondence preserves nine letters to others copied into letters to Atticus; seven additional letters to other correspondents are preserved in the collection *Ad familiares*; and Cicero’s letters make very frequent reference to letters not extant to, from, and between others.

Nor were letters the only texts delivered by couriers. In one letter in April, Cicero complains about reading one or more *contiones* in praise of Caesar; the reference is sometimes thought to be to a published version of Antony’s eulogy, though the speech could be another’s – perhaps one never delivered.²⁴ Somewhat more pleasant reading came in mid-May when Brutus sent Cicero a copy of his speech on the Capitoline after the assassination for Cicero to correct before publication (*ut eam . . . corrigerem ante quam ederet*).²⁵ Cicero found nothing to change that was not a matter of fundamental stylistic preferences, on which he and Brutus differed famously; besides, Cicero already had offered his own improved version of an edict Brutus had drafted, only to be rebuffed.²⁶ But he sent a copy on to Atticus for a second opinion. Atticus wrote back suggesting that Cicero write a different, better speech and publish it under Brutus’ name.²⁷ Cicero, mildly shocked, declined. Interestingly, he objected not to the deception but to the fact that his speech would contradict the one Brutus would already have published. But the fact that a forgery of the speech announcing the restoration of the Republic was even thinkable and, indeed, the willingness of Brutus in the first place to subject his own speech to revision and publication two months after the fact reveal a state of affairs we cannot help but find bizarre. It is tempting to regard Brutus

as trapped in the history books into which his deed had propelled him, brooding over the text that would explain his act to posterity. But Atticus' interest in the matter betrays concern about a more immediate reading public; Brutus, too, must have been thinking about the influence the published speech might have on the opinions of his contemporaries, perhaps especially those moderate supporters of Caesar who might be swayed to the republican side.

While others in their villas traded letters and speeches, Antony, it seems, was doing some reading and writing of his own. Profiting from the vague language we already have considered, Antony began to bring forward texts (presumably discovered in the *commentarii*) which had possessed little or no binding force – let alone legal status – in Caesar's lifetime but which, he insisted, were to be counted among the ratified *acta*. The crisis is a matter of mounting concern in Cicero's letters. Cicero soon notes the irony of praising the tyrannicides even as one defends the "deeds of the tyrant" (*tyranni facta*) and later exclaims, "We rejoice in the death of the man who has been killed – the same man whose deeds [*facta*] we defend!"²⁸ Of course, these regrets could refer simply to the ratification and not to its manipulation by Antony, a clear reference to which first occurs in a letter of April 19, in which Cicero ironically wonders whether Brutus did what he did "in order that everything Caesar did, wrote, said, promised, or thought might have more force than if he were still alive" (*ut omnia facta, scripta, dicta, promissa, cogitata Caesaris plus valerent quam si ipse viveret*).²⁹ In the same letter, Cicero suggests (probably ironically) that the Caesareans had adopted the rejoinder, "Are you opposing the nod [*nutum*] of Caesar?"³⁰ Soon Cicero found that even old friends were exploiting the situation:

And so here we find Antony, having accepted an enormous sum, posting a law "carried by the dictator in the assembly" by which the Sicilians are made Roman citizens, a thing of which no mention was made while he was alive. And what of our friend Deiotarus – isn't his case similar? Certainly he deserves any kingdom he wants, but not through [Antony's wife] Fulvia. And there are a thousand similar instances.³¹

Nor were Cicero and Atticus themselves immune, since they found themselves compelled to make a case to Antony and others that promises made by Caesar regarding clients of Atticus in Buthrotum (a town in Epirus) were to be kept.³²

As suggested by Cicero's complaints about the Sicilians and Deiotarus, Antony seems to have begun forging new entries in the *commentarii*, apparently with the help of Caesar's secretary Faberius.³³ A direct reference to forgery comes in a letter written on April 26: "Things which Caesar never did nor even would have done or allowed are now brought forth from his spurious notebooks [*ex falsis eius commentariis*]. All the same, I have presented

myself to Antony with utter compliance.”³⁴ The last reference is to an exchange of letters between Cicero and Antony of which Cicero encloses copies. Antony had written Cicero to obtain his support for the recall from exile of the son of P. Clodius, allegedly agreed to by Caesar but not enacted before his death. Antony promises to respect Cicero’s feelings on the matter “even though I feel obliged to safeguard Caesar’s *commentarius*,” a less than delicate revelation that Antony is prepared to back his claim with evidence from the *commentarii*.³⁵ Cicero’s letter to Atticus makes it clear that he regards the claim and the threatened evidence as fraudulent, but in his reply to Antony he gives his unqualified assent – probably in order to set the stage for Antony to return the favor regarding the Buthrotians. But this does not stop Cicero from finding the escalating crisis intolerable, and in a letter to Atticus only two days later, after complaining about the recall of Clodius’ son and speculating about who would be brought back next, he exclaims, “We could not serve the man himself, but now we obey his notebooks” (*cui servire non potuimus, eius libellis paremus*).³⁶

At the beginning of June, already having safely stacked the deck, the consuls first convened the board of inquiry (which included themselves and a group of advisors) established by the senatorial decree to review Caesar’s *acta*.³⁷ Presumably their central task was systematic inspection of Caesar’s *commentarii*, but Cicero’s advocacy for the Buthrotians makes clear both that petitioners could approach the board and that supporting documents (Cicero mentions *multi libelli Caesaris* as well as a *decretum Caesaris* which he himself had countersigned) could be placed in evidence.³⁸ The work of this extraordinary tribunal dragged on for several weeks.³⁹

Meanwhile, Caesar’s assassins had continued to offer paralyzing indecision as the disappointing sequel to their bold act. Cicero’s sinking confidence in Brutus and the rest is easy to trace in his changing references to the Ides of March in letters to Atticus. April 10: “Even if everything else is a mess, the Ides of March offer solace.”⁴⁰ April 12: “So far nothing gives me pleasure besides the Ides of March.”⁴¹ April 26: “Let solace come especially from study – but also, to no small degree, from the Ides of March.”⁴² April 28 or 29: “As you suggest, let us be content with the Ides of March.”⁴³ May 14: “The Ides of March do not offer me as much solace as before.”⁴⁴ May 22: “Finding solace in the Ides of March is foolish.” Later in the same letter: “If things proceed along the lines they seem to be following – prepare yourself for what I am about to say – then I take no pleasure in the Ides of March.” Worse follows: “Since killing the master has not made us free, there was no reason to flee that particular master. Trust me, I’m blushing, but there, I’ve already written the words, and I don’t feel like erasing them [*rubeo, mihi crede, sed iam scripseram; delere nolui*].”⁴⁵

This last line offers an almost epigrammatic expression of the coy game of confession and concealment that Cicero and Atticus so often played in their letters. In this regard, the summer’s correspondence is dominated by the

high-stakes question of what Cicero himself should or should not do. Despondent over the conspirators' aimlessness, anxious about his own safety, and ultimately convinced that little could be done until Antony left office (on January 1), Cicero found increasingly persuasive a plan, which he had made even before Caesar's death, to visit his son, studying in Athens. Cicero repeatedly and carefully sounded out Atticus' opinion and found what he thought was – at the very least – sanction. On August 6, he set sail, only to be driven back by unfavorable winds. Cicero later regarded the bad weather as a lucky break, for back on land, he was met by messengers from Rome bearing promising news: “an edict of Brutus and Cassius, word that the senate would be full on the Kalends [of September], and letters sent by Brutus and Cassius to former consuls and praetors, asking them to be present,” plus a copy of an encouraging speech given by Antony.⁴⁶ An even more compelling text soon arrived: a letter from Atticus which apparently accused Cicero of deserting his country and which even instructed him to write up an apologetic treatise explaining the reason for his departure. But for the adverse winds, Cicero would have learned of Atticus' true feelings too late. On the way back to Rome, Cicero answered the betrayal with a single, pointed letter of his own.⁴⁷

This sketch of events from the Ides of March to the end of August necessarily omits countless details preserved in Cicero's correspondence, to which the reader is referred for the full picture. In particular, insights into the various roles of textual culture in the events of 44 abound in the letters; to suggest the richness of even the miscellaneous episodes, one may mention the promise by Servilia, mother of Brutus, to use her formidable influence to tinker with the text of a senatorial decree after it was passed,⁴⁸ or the scandal that ensued when signs were posted at Rome announcing games to be given by Brutus – on the “Nones of July.”⁴⁹ In the end, one cannot help being struck by the degree to which written texts (including, of course, letters) mediated events in the aftermath of the assassination. Indeed, one might even begin before the Ides of March, with the anonymous notes left here and there for Brutus to find, urging him to awake and take action.⁵⁰ Then there was the note of warning thrust into Caesar's hands on his way to the fatal meeting but never read, later found among other notes Caesar was carrying.⁵¹ Nor can we overlook the assassination itself: “Speak, hands, for me!” cries Casca in Shakespeare's play, but Shakespeare fails to mention that the conspirators had concealed their daggers in writing-cases and that Caesar fought back with the stylus he held ready for the everyday business of the senate.⁵² After all, tyrannicide was an exceptional event; writing (at least in the world in which Caesar and his assassins met) was everywhere.

Before proceeding, we must review one more aspect of Roman writing during the spring and summer of 44 – indeed, that aspect usually meant when scholars refer to “Roman writing” – namely, the production of literary texts. To do so, we must return to the immediate aftermath of the Ides of

March. We are frustratingly in the dark about Cicero's activities from March 18, when he addressed the people regarding the meeting of the senate the day before, to April 7, when he left the city. But it can be deduced that he spent some of his time completing the *De divinatione*, written in the main prior to the Ides of March but clearly finished afterward, since a number of passages make implicit or explicit reference to Caesar's death.⁵³ Among these is the proem to book 2, crucial for the chronology of Cicero's prior philosophical works, of which he provides a list. But the passage is also remarkable for its often overlooked explanation of Cicero's motives for writing philosophy. The book begins as follows:

While I was asking myself a great deal and contemplating at length the question of how I might prove useful to as many people as possible, so that I might never stop, even briefly, advising our republic, I came across no more important means than to pass on the ways of the finest arts to my citizens, a goal which I believe I already have achieved in a good number of books.⁵⁴

The key to this grand formation lies at its middle: "so that I might never stop, even briefly, advising our republic" (*ne quando intermitterem consulere rei publicae*). This reference to the futility of political service during Caesar's dictatorship is covert enough to have been written during his lifetime, but the more explicit close of the proem can only have been written afterward:

For I had learned this from Plato and philosophy: there are certain natural changes of direction in states, so that now they are in the hands of the leading men, now they are in the hands of the people, and sometimes they are in the hands of individuals. Since this had befallen our republic and I had been deprived of my former duties, I began to renew these intellectual pursuits [*studia*], so that my thoughts might thereby find relief from their troubles and so that I might be of use to our fellow citizens in whatever way was left to me. In books we gave our opinion, we addressed the people: we considered that philosophy had been given to us as a substitute for service to the Republic [*in libris enim sententiam dicebamus, contionabamur, philosophiam nobis pro rei publicae procuracione substitutam putabamus*]. Now, since we have begun to give advice regarding the Republic, our effort should be bestowed on the Republic, or rather our every thought and care should be placed there, and we should leave to this intellectual pursuit only so much time as will be left over after the performance of public duties and offices.⁵⁵

Cicero's language is striking: the writing of books had replaced both venues for political oratory, the senate (*sententiam dicere*) and the Forum (*contionari*).

The passage just cited offers a kind of *apologia* for Cicero's political paralysis during the dictatorship, but its rationale was by no means an afterthought to Caesar's death: Cicero had begun to develop the same theme in his first treatise after Pompey's defeat, the *Brutus*.⁵⁶ In the two years between the composition of the *Brutus* and that of the *De divinatione*, Cicero composed ten or so philosophical treatises (counting as philosophy, for reasons Cicero himself explains,⁵⁷ the *Brutus* and the *Orator*), more than in the whole of his preceding life – powerful evidence of how deeply Cicero had felt the need for a “substitute” for political activity and public discourse. Nor had Cicero been alone in his retreat into scholarship, and his closest companions included not only Atticus but also, most strikingly, Brutus, to whom Cicero had dedicated no fewer than six of the works he had composed under Caesar, occasionally absorbing him into the text as interlocutor.⁵⁸ Probably also from the same period was Brutus' lost treatise *De virtute*, dedicated in turn to Cicero. But Brutus' true answer to Cicero's dedications was his own shouted dedication of the assassination of Caesar: as already remarked, Brutus raised his bloody dagger and called on Cicero by name.⁵⁹ In the context of the literary activity just described, Brutus' gesture not only blends deed with text but also, eerily, blood with ink.

Nevertheless, Cicero's prediction of a return to the old order of things, leaving little time for study, did not exactly come true. Throughout the coming months – and even in the fall, when Cicero did indeed return to public life – his writing of treatises continued unabated. He soon completed a brief essay *De fato*, conceived as a pendant to (and already promised in) the *De divinatione*.⁶⁰ On July 3, Cicero promised Atticus, “I shall send you right away my book *De gloria*”; the book arrived a week later, accompanied by specific instructions on its handling: “I have enclosed the *De gloria*. Keep it safe, as usual, but have the two selections marked for Salvius to read (both of them but nothing else) when he comes across the right audience at a dinner party.”⁶¹ Salvius was a slave Atticus also used as a copyist. A week later, Cicero sent along the original copy (ᾠρχέτυπον) of the same treatise, which in the interim he had marked with additions and corrections, and asked Atticus to have it copied onto a large-format papyrus (*macrocollum*), again so that it could be read to a suitable audience at dinner.⁶² Then, on July 25, an embarrassed Cicero informed Atticus of a messy new *corrigendum*:

Listen now to my carelessness. I sent you my book *De gloria* – and in it I included the preface which appears in book 3 of my *Academica*. This happened for this reason: I keep a volume of prefaces. I usually select from it when I have begun a composition. So back in my villa at Tusculum, since I didn't remember that I already had used that preface once and for all, I tossed it into the book which I have sent you. But when I was reading the *Academica* on the boat, I realized my mistake. So I immediately wrote out a new preface, which

I now send you. Please cut off the old one, and glue this one in its place.⁶³

Only a week later, on a boat from Velia to Rhegium in preparation for his departure for Greece, Cicero was moved to dictate a free adaptation of Aristotle's *Topica*, which he dedicated to his friend Trebatius, who had puzzled over the original in the library of Cicero's Tusculan villa.⁶⁴ Yet another treatise – a dialogue in the manner of Heraclides Ponticus – is promised several times to Atticus in the correspondence but seems never to have been written.⁶⁵ What survives of texts written that summer seems to confirm the combination of restlessness and negligence suggested by their modes of composition. One might say that writing – a noble refuge under the dictatorship – persisted for Cicero in the aftermath of Caesar's death as something like a nervous habit.

From Cicero's final, angry letter to Atticus that summer, we learn that in the unexpected letter of rebuke Cicero had just received, Atticus had even advised him to work up a brief apologetic text dedicated to Atticus himself, explaining why the trip to Greece was necessary. Atticus would then see to the publication of what he refers to as a *scholion* or "note." Perhaps the term is an understatement designed to soften the blow of the request, but it also strengthens the impression already given by the matter of Brutus' speech that literary Romans could not help seeing even their actions as texts in need of periodic glossing. Of course, by the time Cicero received these instructions, he had abandoned the planned trip and the point was therefore moot, but he still felt compelled to anticipate and refute Atticus' possible argument that an apology was necessary to explain away Cicero's plan in the first place and even the inconstancy of changing his mind. What makes this interesting is the fact that, a few weeks later, Cicero offered precisely this sort of apology – not, however, as a separately circulating *scholion*, but as the opening remarks of his first speech to the senate: "Before I say what I think needs to be said at this time regarding the Republic, conscript fathers, I will briefly explain to you the rationale of my departure and return."⁶⁶

Cicero's "return" – to Rome, to politics, to oratory – might seem to be the fulfillment of the prediction, made months before in the *De divinatione*, of an inversion of the substitution, required by Caesar's dictatorship, of private study for public oratory. Thus Cicero's rejection of the discreet treatise proposed by Atticus in favor of a more public explanation would indicate an escape, at last, from the textualized world that persisted through the summer after Caesar's death. But it should be remembered that this speech soon circulated in written form. And in the coming weeks, Cicero would repeat phrases from this apology in the treatise *De officiis* he composed for his son in lieu of the planned paternal visit. In the end, rather than establishing (or reestablishing) a hierarchy of speech over writing, the apology reveals

an interdependence, even an interchangeability, between multiple genres – epistolary, apologetic, philosophical, and, of course, oratorical. That this last category could be spoken (though, as we once again will see, oral delivery of a “speech” sometimes was a convenient fiction) does not fully set it apart from the textual milieu from which it emerged and to which, with publication, it returned. In these terms, the episode of the apology sets the tone for the fateful events that follow.

Cicero delivered his speech to the senate on September 2, having returned to Rome two days earlier. In the interval between Cicero’s abandonment of the trip to Greece and his reentry into Rome, the promising signs that had drawn him back seem to have come to naught. Feigning exhaustion from the journey, Cicero skipped the meeting on September 1 when the senate was scheduled to vote on the designation of certain days in honor of Caesar. At the meeting, Antony, who perhaps had misread Cicero’s return as a capitulation to his own authority, erupted into an unexpected tirade against Cicero’s absence. At the following day’s meeting, Antony himself was absent, and Cicero delivered what later came to be known, by allusion to famous speeches by Demosthenes against Philip of Macedon, as Cicero’s First Philippic.⁶⁷

Apart from the apology considered above and a brief defense against Antony’s fulminations the day before, Cicero provides in the speech a critical review of Antony’s actions since March, with particular emphasis on his misuse of the ratification of Caesar’s *acta*. Stopping short of any direct accusation of forgery, Cicero prefers to emphasize the contrast between Antony’s trumpeting of miscellaneous notes as valid *acta* and his neglect, according to Cicero, of laws proposed by Caesar and carried by the people:

I wish Antony were here, though without his “legal advisors.” (But apparently he is allowed what he did not allow me yesterday: not to feel well.) He would explain to me, or rather to you, conscript fathers, how he is defending Caesar’s *acta*. Or is it that what is brought forth on Antony’s sole authority [*se uno auctore*] in little notebooks and autographs and booklets [*in commentariolis et chirographis et libellis*] – indeed, not even brought forth but merely mentioned – will be hard and fast *acta* of Caesar, but what he inscribed on bronze, on which he wanted the commandments and permanent laws of the people to be, will be regarded as worthless?

And you who overturn Caesar’s laws are defending his *acta*? Or maybe you are saying that if Caesar jotted something down in a notebook to avoid forgetting it [*memoriae causa*], then that will be counted among his *acta* and should be defended, even if unfair or unjust – but what he put to the people’s vote in the centurial assembly, that will not be reckoned among Caesar’s *acta*.⁶⁸

Cicero insists that he still supports the observance of Caesar's *acta*, for the same reasons of peace and stability he had voiced in the temple of Tellus when their ratification was first proposed, but only if his *leges* receive equal defense. Cicero concludes the speech with a patronizing invitation to Dolabella (who had assumed Caesar's vacant consulship) and Antony to return to their senses, culminating in a not-too-delicate joke in which Cicero observes that the anxious crowd was turning its consideration to the lives of its consuls.⁶⁹

Antony surely did not wait long to hear what had been said at the meeting. Presumably he eventually read Cicero's speech, either in the official transcript made of the senate's proceedings (on this practice, see the previous chapter) or in the published form in which Cicero soon allowed it to circulate.⁷⁰ Fuming, he retired to Tivoli to prepare his reply: a blistering attack on Cicero's entire career, delivered before the senate two and a half weeks later, on September 19. Antony's speech does not survive and must, therefore, be reconstructed from Cicero's Second Philippic, which pretends to be a response delivered immediately afterward, in Antony's presence. In fact, Cicero's speech, among his most famous (this is the one Juvenal calls the *divina Philippica*), was written during the coming weeks and was not intended for oral delivery at all.

The circumstances of the publication of Cicero's Second Philippic are somewhat obscure. On October 25, Cicero, who had left Rome to spend some time in his villas, sent Atticus a letter from the Bay of Naples that includes the following:

I agree with you that I should neither lead the march nor bring up the rear; nevertheless, I should show my support. I have enclosed the speech. Keeping it safe and letting it out are up to you [*eius custodiendae et proferendae arbitrium tuum*]. But when will we see the day when you think it ought to be published [*edendam*]? I don't see how the truce you write of is possible. To offer no sound in answer – that's a better plan, one which I think I'll pursue.⁷¹

It is not clear whether *proferre* and *edere* here are synonyms, or whether Cicero draws a contrast between the former as showing or reading the speech to intimates (licit, if Atticus wishes) and the latter as the circulation of written copies.⁷² To a letter written a few days later, Cicero adds these lines:

As I write this, I think just enough time has passed for my speech to have been delivered to you. Gracious, how nervous I am about what you will think! And yet, what difference does it make to me? The speech is not about to show itself unless the Republic is regained. On that subject, I dare not write what my hopes are.⁷³

To Cicero's relief, Atticus' judgment was favorable, prompting this:

I am glad that my work has met with your approval. You cited its very flowers, which seem to me even more fragrant as a result of your verdict. I was dreading those little red crayons of yours [*cerulas enim tuas miniatulas illas extimescebam*].⁷⁴

This is one of several passages that reveal how Atticus marked *corrigenda* in Cicero's drafts. In what follows, Cicero does reply to a change suggested by Atticus – a relatively minor matter involving an allusion to relatives of their mutual friend Sicca. In this regard, Cicero sighs, “Would that I might see the day when the speech wanders about freely enough to enter even Sicca's own home!” Cicero goes on to urge Atticus to read the speech to their friend Sextus Peducaeus and to forward his opinion, but he advises Atticus to keep two other friends of most dubious allegiance from meddling.

This letter, written on November 5, is the last we hear of the matter; Cicero's final surviving letter to Atticus was written only a week later. On balance, it is difficult to say whether Cicero's concerns about divulging the speech are genuine or coy; one suspects that, deep down, he is fishing for authorization from Atticus for the full, frontal assault he would mount against Antony upon returning to Rome in December. It does not in any case seem likely that the existence of a Ciceronian reply can have remained a secret for long. Certainly there would be no reason to hold back publication once Antony was declared an outlaw by the senate on January 1, and it seems likely that the speech began to circulate no later than the delivery of the Third and Fourth Philippics before, respectively, the senate and the people on December 20.⁷⁵

While writing and revising the Second Philippic, Cicero was also composing his last surviving philosophical work, the *De officiis*.⁷⁶ That he found time for a major treatise after his return to Rome and to politics is at first surprising. One could surmise that the work's notorious internal inconsistencies and the fact that it seems to have been left in draft form (including marginal alterations Cicero never integrated into a clean copy) reflect a distracted author. But it should also be remembered that posterity has regarded the treatise as one of Cicero's greatest accomplishments: Thaddäus Zielinski calls it “der wichtigsten und einflußreichsten aller philosophischen Schriften Ciceros.”⁷⁷ Clearly, Cicero's haste (well documented in contemporary letters) did not entirely vitiate the result.

We should also note that both the *De officiis* and the Second Philippic were written not in Rome but in Cicero's villas (to which he retired from mid-October to early December) – those retreats that long had been the scene of Cicero's literary *otium*. Further context for regarding the speech, and not just the treatise, as a work of *studium* is to be had in the general dependence of the Philippics on Demosthenic models (not just for their later title), subject

of the elegant study by Cecil Wooten.⁷⁸ Indeed, we cannot really invoke the neat dichotomies of the *De divinatione* and regard Cicero's speech (undelivered and not yet planned for publication) as oratorical *negotium* that would have left little *otium* for philosophizing. In a telling aside in the treatise, Cicero describes the political "silence" that had occasioned its composition in startlingly textual terms:

Cum autem respublica, in qua omnis mea cura cogitatio opera poni solebat, nulla esset omnino, illae scilicet litterae conticuerunt forenses et senatoriae.

But since the Republic, in which I used to place my every concern, thought, and effort, no longer exists at all, it is only natural that those writings [*litterae*] of the Forum and the senate have fallen silent.⁷⁹

Since, when Cicero wrote these words, he was fast at work on the Second Philippic, we can only conclude that the most pressing question on his mind was not a choice between speech or writing, politics or philosophy, but rather this: to publish or not to publish? While the answer to this question remained negative, speech and treatise were, in political terms, equally irrelevant. Cicero seems thus to have devoted to both all the energy of enforced *otium*.

The simultaneous composition of the Second Philippic and the *De officiis* left a profound mark on both, and the two works should be (but seldom are) read together.⁸⁰ Frequently the texts display direct points of contact in language or argumentation, suggesting that Cicero may have tried out a point in one before exporting it to the other, though, for the most part, we can only guess which came first.⁸¹ But probably the most interesting connection between the two texts is the most general one: it is scarcely coincidental that Cicero was writing a treatise on civic duty even as he set forth, in the Second Philippic, the terms of his own final struggle for the Republic. In this regard, Cicero's repeated emphasis in the *De officiis* on willingness to die for one's country is highly suggestive, since to it corresponds the grand conclusion of the Second Philippic – "I scorned the swords of Catiline; I shall not shrink in fear from yours," and so on – in which Cicero declares that, as an old man who has been decorated with Rome's highest honors, he himself is more than ready to die. Reasonably, many readers have found here evidence that Cicero foresaw, with lucidity and courage, exactly where the assault on Antony might lead. But it should again be remembered that, when Cicero wrote these words, the speech they concluded was still a private exercise, not intended for delivery and not yet directed toward publication. It might instead be more accurate to say that, both in the treatise

and in the speech, Cicero drafted a reflection of a man he had not yet quite become. So compelling was what he saw that soon there would be no turning back.

So far we have neglected the ostensible *raison d'être* of the *De officiis* in the first place: the treatise, sent to Cicero's son Marcus in Athens, was to take the place of the planned paternal visit, abandoned when Cicero had returned to Rome. Cicero closes the work with this dedication:

You have here a gift from your father, my son Marcus – in my opinion, a valuable one, but how valuable depends on what you make of it. In any case, you should receive these three books as guests among your notebooks from Cratippus' lectures. But just as you would now and then even have listened to me, had I come in person to Athens (which indeed would have happened, had not our country called me back with a clarion voice in the midst of my journey), so also, since via these volumes my voice has traveled to you, please devote to them as much time as you can. But your ability to do so will depend upon your will. And when I perceive that you enjoy this kind of knowledge, I will speak with you – soon face to face, I hope, and in the meantime, while I am far away, from far away I will address you. And so farewell, my dear little Cicero, and persuade yourself that you are most dear to me, but that you will be much dearer still if you find pleasure in such advice as is here.

One cannot help but be struck by the way in which Cicero in these words allows writing to substitute for his voice, and, by extension, for himself, even in the role of father.

At precisely the same moment, Cicero had another audience to whom he spoke, though absent, in written form – and that, of course, was Antony. To Antony and the Second Philippic, then, let us now turn in earnest. If in the following I adopt something of a forensic tone, I beg my reader's patience: after all, this book began as an inquiry into the motive behind a gruesome crime.

As in the first speech, the manipulation of Caesar's *acta* is a dominant theme in the Second Philippic, expressed, however, in less equivocal terms:

Quid ego de commentariis infinitis, quid de innumerabilibus chirographis loquar? quorum etiam institores sunt qui ea tamquam gladiatorum libellos palam venditent.

What can I say about the endless *commentarii*, the countless holographs? Why, there even are hawkers who sell them out in the open, like programs for the gladiatorial games.⁸²

Nevertheless, in alleging forgery, Cicero shows a striking preference for rhetorical questions and ironic asides:

In the interests of peace, the *acta* of Caesar were ratified by the senate – that is, what Caesar did, not what Antony said Caesar did. Whence did these other *acta* pop up, on whose authority are they brought forward? If they are false, why are they approved? If they are genuine, why are they for sale?⁸³

Cicero goes on to suggest that the review of the *acta* mandated by the senate did not take place – an allegation flatly contradicted by his letters from the summer.⁸⁴ Clearly, Antony's handling of the *acta* was anything but above board, but we cannot know whether the corruption really was as unrestrained as Cicero implies.

The possibility of Ciceronian exaggeration is worth keeping in mind, if only because Antony himself was so clearly exercised by what he perceived to be Cicero's hypocrisy. In his own speech on September 19, Antony had taken the unexpected step of producing and reading to the senate a letter which Cicero had sent him over the summer, responding to his own letter asking for support for the recall from exile of the son of Clodius. The letter survives because Cicero had sent a copy to Atticus, though he worried about what his friend might think of its insincerity. The letter begins thus:

I would have preferred you to take up this matter in person, rather than by letter, for one reason only: you would have been able to see my love for you not only in what I say, but even, as the saying goes, in my eyes and on my face. For not only have I always loved you, motivated first by your devotion and then by your favor, but in light of current events the Republic has so recommended you to me that I hold no one dearer. Your letter, written with magnificent friendliness and respect, has so affected me that I seem less to be granting you a favor than to be receiving one from you.⁸⁵

We can well imagine how the public reading of this letter might be embarrassing for Cicero. D. R. Shackleton Bailey acerbically comments, "Like most people who talk or write better than they think, the less genuine the note the more Cicero was apt to force it."⁸⁶

Cicero's damage-control over the letter in the Second Philippic is, however, rather more clever and cruel than generally is realized. Cicero first blasts Antony for the bad manners to read this private letter in public after the rupture of their *amicitia*: "What man ever, provided that he was minimally acquainted with the manners of good people, has brought out into the open and read aloud a letter sent to himself by a friend prior to an intervening

argument?"⁸⁷ Cicero then passes from Antony's *inhumanitas* to his *stultitia* and begins to taunt him with insinuations that the letter is a fake:

Sed quid opponas tandem, si negem me umquam ad te istas litteras misisse? quo teste me convincas? an chirographo, in quo habes scientiam quaestuosam? qui possis? sunt enim librari manu.

But what could you possibly argue back, if I were to deny that I had ever sent you that letter? What witness will you use to prove me false? Would you prove it by the handwriting? *That's* a subject in which you have a lucrative expertise! But how could you? *It's in the hand of a secretary.*⁸⁸

Since Cicero goes on to admit that the letter is his, this digression seems gratuitous, unless you realize that it is all a set-up for this last line. As we have seen before, decorum required that important letters such as this one be written out in the correspondent's own hand, so much so that it seems highly likely that Cicero is lying here and that the letter is in fact in his own hand.⁸⁹ But claiming the contrary utterly undermines the letter's apparent warmth: this was a business letter of the sort which one dictated to a secretary; Mark Antony did not merit a letter in the hand of Cicero. Can we find in this insult, all the more stinging if it was not true, the germ of Antony's feverish obsession with that duplicitous hand?

In his speech on September 19, Antony had made a joke about a line from Cicero's poem on his consulship. We do not know the precise point of Antony's gibe, but others before and after him had singled out the same line (*cedant arma togae, concedat laurea laudi*, "Let arms yield to the toga; let laurel be the prize for esteem") as a glaring example of Cicero's self-aggrandizement over the Catilinarian affair, even at the expense of the contemporary military success of Pompey, the alleged reference of *arma*.⁹⁰ Cicero answers the insult with sexual innuendo – the toga, he quips, had often yielded to Antony's weapons – and then this:

I shall answer you no further about my poetry, except only to say, in short, that you know nothing about my poetry or about any literature whatsoever [*te neque illos [versus] neque ullas omnino litteras nosse*], that I never have failed either the Republic or my friends, and that all the same I have used what energy was left to me to achieve, in every genre of my written works [*omni genere monumentorum meorum*], the following: that my sleepless nights of writing and their literary result might offer something useful to the younger generation and bring some measure of respect to the Roman name.⁹¹

Calling your opponent ignorant of literature was a stock element of Roman invective (Cicero had made the same sneering suggestion about Verres). Of course, by the time he turned his scorn on Antony, Cicero had a celebrated literary career behind him. But even beyond Cicero, Antony must have been aware that many literary men were against him. Chief among these, of course, was Brutus, but there were others. Later in the speech, Cicero takes great delight in describing Antony's debauched frolics in a villa of Marcus Terentius Varro (prolific writer on a staggering array of subjects) that had been confiscated after Pompey's defeat – a place where great things once had been “entrusted to writing” but which recently “echoed with the voices of drunkards while its floors swam with wine,” and so on.⁹² (At this very moment, Varro probably was at work on his monumental *De lingua Latina*, most of which would be dedicated to Cicero.) Far more humiliating, however, was Cicero's comparison of Antony with Caesar, whom he even praises for many fine attributes, including his literary learning.⁹³ Cicero, Caesar, Brutus, and Varro all were known for their literary accomplishments; all even wrote poetry (though the judgment of posterity has been kind only to the last); it is sometimes forgotten that Cicero even wrote a poem in honor of Caesar which, regrettably or thankfully, does not survive.⁹⁴ Among both friends and enemies of a literary bent, Antony was well out of his league. Perhaps he also felt pressure in this regard from the presence of young Octavian, who had broken off his studies in Greece and returned to Italy after Caesar's death. It might be too much to suppose that Antony's joke had been borne of a rankling sense of insecurity, but there can be no doubt about the intent of Cicero's taunting response.

In short, Antony had good reason to resent the hand of the letter-writer and literary author Cicero. But to understand why he hated the hand of the orator, we must look for that essential ingredient of hatred: fear.

One of Cicero's boldest moments in the Second Philippic comes in an icy aside about the Ides of March in which he notes, “If, as the saying goes, the pen [*stilus*] had been mine, then trust me, I would have finished the whole play, not just one act.”⁹⁵ Cicero here turns a common expression to pointed use: the joke, of course, is on the fact that the conspirators had concealed their weapons in writing-cases. But one cannot help finding even deeper significance in Cicero's words, for as he wrote them, the pen literally was his, and he put it to use quite deliberately to finish what the conspirators had left undone. With the Second Philippic, Cicero was aiming at nothing short of Antony's destruction.

In this regard, Cicero's metaphorical reference to the writing of plays is peculiarly apt – and not just because he so often describes Antony as cavorting with actors and actresses. First, Cicero scripts the absent Antony's reactions to the undelivered speech, repeatedly describing expressions of consternation on his face.⁹⁶ Second, and more importantly, Cicero offers scene after scene of

Antony as a grotesque buffoon, depicted with all the vividness of a satirical playwright or poet. Cicero lavishes attention on Antony's sex life, even years before; in one memorable scene, he claims to describe Antony's youthful "marriage" to Curio:

You donned the toga of manhood, but you soon turned it into a womanly costume. At first you were a common whore, and you could count on a fixed price – and a high one at that – for your disgrace. But right away Curio intervened, rescued you from a prostitute's daily trade and, as if he had awarded you the gown of matronhood, he set you up in stable, certain matrimony. No slave bought to satisfy lust was ever as much in his master's power as you were in Curio's. How many times did his father throw you out of his house? How many times did he post guards to keep you from crossing his threshold? But you, with night as your accomplice, lust as your advisor, money as your master, were lowered in through the roof.⁹⁷

Other passages focus on Antony's well-known gluttony and drunkenness. Here Cicero rehearses an especially ugly episode: "In a meeting of the Roman people, while conducting public business as master of the horse – for whom it is disgraceful even to burp – this individual vomited, filling his lap and the whole platform with finger-foods stinking of wine."⁹⁸ The passage for which this is the unpleasant climax is cited (with admiration) by Quintilian more than any other from the speech – evidence of just how unforgettable Cicero's unflattering portraits could be.⁹⁹

Memoria is a word that appears several times in the Second Philippic. Regarding Caesar's assassins, Cicero makes this prediction:

What future generation will be found so forgetful [*immemor*], what literature [*litterae*] will be so ungrateful that they will not perpetuate the glory of these men with the memory that belongs to immortality [*immortalitatis memoria*]? Go ahead and write my name down [*ascribe me*] in such a company.¹⁰⁰

Noteworthy is Cicero's linking of memory with writing. And even the ironic reference to himself at the end (Cicero repeatedly objects that Antony's association of him with the assassination is undeserved flattery) is a reminder that, with his attack on Antony, Cicero really was writing his own place in history. But later in the speech, the object of memory is Antony himself. The following passage refers to Antony's existing place in the history books for his role in inciting the bloody war between Caesar and Pompey, but Cicero's words could refer as well to his own repetition of the charge:

O you pitiful man, if you understand these things – even more pitiful, if you do not understand that this is being committed to writing and entrusted to memory [*hoc litteris mandari, hoc memoriae prodi*], that for all eternity no future generation will ever fail to remember this . . .¹⁰¹

Naturally, these lines could just as well describe the potential (and ultimately realized) role of Cicero's whole speech in history's memory of Antony.¹⁰²

By 44 BCE, no one in Rome could be so naive as not to realize the peril of appearing on the wrong side of a published Ciceronian oration. Cicero had made that clear already some thirty years earlier, when he had convicted Verres – once in a Roman law court with written evidence, and then repeatedly with the published Verrine speeches. By the time Cicero wrote the Philippics, it is likely that schoolchildren all over the Roman world were learning to declaim in proper Latin by reading his Verrines (and other speeches) as they would continue to do for at least six centuries.¹⁰³ Every cutting turn of phrase that Cicero himself never had the chance to pronounce in court was repeated, over and over, first in the stammering voice of the beginner, later in the polished tones of the experienced student: "Or did you really think, Verres, that you would be tried on the basis of your account books alone?"

Such, perhaps, were Antony's thoughts when a copy of this latest "speech" at last made its way into his hands. He stared down at the papyrus and ink of Cicero's text, and saw himself reflected back, cruelly disfigured. The speech was a tissue of insinuations, misrepresentations, exaggerations – even its delivery was a lie. But how many who were not in the senate that day would know to doubt its truth? How many, indeed, outside Rome, or at the far reaches of the empire? How many schoolchildren, generations hence? Already copies of the speeches were spreading, and from each copy would be made more. Antony was trapped by Cicero's words, as if that cursed hand had drawn around him a cage from which there was no escape.

One year later (and after at least a dozen more Philippics, none of which Antony heard delivered), a chance for revenge would finally come.¹⁰⁴

"These many then shall die; their names are prick'd." So Shakespeare opens the scene of the proscription, with Antony speaking, "in a room in Antony's house," though ancient sources tell us that the drafting of the list took place in Bologna. "Look, with a spot I damn him," Shakespeare has Antony say as he consents to the death of a relative; probably we can imagine that the list was drawn up on wax tablets. Later, the names written in the wax would be copied, along with the price in gold for each head, by a sign-painter onto a large white board to be set up, presumably, in the Forum. "By the list on a single noticeboard are surpassed the catastrophes of Pharsalus, Munda, and Mutina," it was later said.¹⁰⁵

Now, the stylus was in Antony's hand. Turning his hatred into a kind of sympathetic magic, he wrote a name, and so erased a man: *M. Tullius Cicero*. What satisfaction he must have felt in every stroke! For a moment, at least, he kept at bay the voice of history: *omnis posteritas illius in te scripta mirabitur, tuum in eum factum execrabitur, citiusque e mundo genus hominum quam Ciceronis nomen cedit*, "All posterity will admire his writings against you, will curse your deed against him, and sooner will the human race slip from the earth than will the name of Cicero."¹⁰⁶

Plutarch describes the more immediate consequences in his *Life of Antony*:

When Cicero was butchered, Antony ordered that his head be cut off, along with his right hand, the hand with which he had written the speeches against him. And when these were brought back to him, he gazed upon them with joy and burst into giddy laughter. Then, having drunk his fill of the sight, he ordered them to be set up on the Rostra in the Forum . . .¹⁰⁷

In Cicero's head, the crowd saw "not the face of Cicero, but an image of Antony's soul";¹⁰⁸ in his hand, they contemplated a bloody pictogram for a life inseparable from the written word.

NOTES

INTRODUCTION

- 1 For more on the significance of Cicero's head, see Amy Richlin, "Cicero's Head," in James I. Porter, ed., *Constructions of the Classical Body* (Ann Arbor, 1999), p. 190. I was lucky enough to hear a preliminary version of this at the meetings of the American Philological Association in Atlanta in 1994. I owe Richlin thanks for much encouragement over the years – and, of course, for leaving Cicero's hands behind.
- 2 Except for Plut. *Cic.* 48.6, all who mention two hands do so as interlocutors in Seneca the Elder's *Suasoriae*: the historian Livy (*Suas.* 6.17), the poet Cornelius Severus (*Suas.* 6.26), the orator Bruttedius Niger (*Suas.* 6.20). One hand only is mentioned by Plut. *Ant.* 20.2; Liv. *Per.* 120; App. *B Civ.* 4.19.77; Val. Max. 5.3; Dio Cass. 47.11.2; the historian Aulus Cremutius Cordus in Sen. *Suas.* 6.19; the rhetor Aulus Porcius Latro in Sen. *Contr.* 7.2.9.
- 3 Helene Homeyer, *Die antiken Berichte über den Tod Ciceros und ihre Quellen* (Baden-Baden, 1964), p. 14.
- 4 Cornelius Severus (Sen. *Suas.* 6.26) refers to Cicero's hands as *operum ministrae* (cf. Cremutius Cordus, Sen. *Suas.* 6.19, *manus dextera, divinae eloquentiae ministra*). The motive given by Plutarch probably is echoed by the whole pretext of Sen. *Suas.* 7, namely, that Antony will spare Cicero if he agrees to burn his writings. Of course, if in fact both of Cicero's hands were amputated, then accounts that specify the right hand might represent an absorption of Antony's motive into the mutilation itself, with emphasis on the more crucial hand for writing.
- 5 References in recent decades to Roman "oral culture" probably may be traced back to Walter Ong's application of the phrase to Rome in *The Presence of the Word: Some Prolegomena for Cultural and Religious History*, a series of lectures given in 1964 and first published in 1967 (New Haven).
- 6 This precise emphasis has produced an omission some may find surprising: I will have relatively little to say about Cicero's precepts about writing in his oratorical treatises. Resolving the frequent disparity between Ciceronian theory and practice on this subject is no easy matter and, for this and other reasons, the question deserves its own separate treatment – though I hope that study in this direction will be facilitated by my own account of what Cicero actually did.
- 7 Details will be found in my notes, but see especially works listed in my bibliography by the following authors and editors: Humphrey, Bowman and Woolf, Cambiano *et al.*, Cavallo *et al.*, Harris, Sickinger, Small, Thomas. On literary "reading culture," see also William A. Johnson, "Toward a Sociology of Reading in Classical Antiquity," *AJPPhil.* 121 (2000): pp. 593–627.
- 8 *Literacy and Orality*, p. 159.

1 THE YOUNG CICERO, READING

- 1 The fresco is now in the Wallace Collection in London (inventory number P538); reproduction and notes in John Ingamells, *The Wallace Collection Catalogue of Pictures*, vol. 1 (London, 1985), pp. 279–81.
- 2 E. K. Waterhouse, “The Fresco by Foppa in the Wallace Collection,” *Burlington Magazine* 92 (1950), p. 177.
- 3 Plut. *Cic.* 2.2.
- 4 Anthony Grafton, *Commerce with the Classics: Ancient Books and Renaissance Readers* (Ann Arbor, 1997), p. 9. Grafton’s description of his own project bears quoting in relation to the efforts of the present chapter: “The physical aspects of reading – the hardest, perhaps, to reconstruct, but vital nonetheless to any effort to produce a three-dimensional vision of this lost world of experience – call as loudly as the intellectual ones for sustained discussion” (p. 8).
- 5 In a reminiscence by Quintus in a letter to Tiro, *Fam.* 351 = 16.26.2.
- 6 *Leg.* 2.3. Cicero tells us almost nothing about his father; this rare notice serves the literary purposes of the dialogue and may be an idealization. Cf. Shackleton Bailey, vol. 1, pp. 281–2, on Cicero’s laconic communication of his father’s death in *Att.* 2 = 1.6.2.
- 7 On ancient portraits of Cicero, see J. J. Bernoulli, *Römische Ikonographie*, vol. 1: *Die Bildnisse berühmter Römer* (Stuttgart, 1882), pp. 132–44; J. M. C. Toynbee, *Roman Historical Portraits* (London, 1978), pp. 28–30; Maurizio Borda, “Iconografia ciceroniana,” *Marco Tullio Cicerone. Scritti commemorativi pubblicati nel bimillenario della morte* (Firenze, 1961), pp. 257–65; Luciano Laurenzi, “Il ritratto di Cicerone,” *Atti del I congresso internazionale di studi ciceroniani* (1959), vol. 1 (Roma, 1961), pp. 105–11.
- 8 François Hinard, *Les Proscriptions de la Rome républicaine*, *Collection de l’Ecole Française de Rome* 83 (Rome, 1985), pp. 327–551.
- 9 Florus 2.9.25 calls the proscription a *novi generis edictum*. The following discussion is based on Hinard, op. cit., pp. 30ff.
- 10 These are the numbers given by Plutarch, *Sulla* 32.3. Cf. Hinard, op. cit., p. 54.
- 11 Plut. *Sulla* 32.2.
- 12 *RE* 23.2440–1.
- 13 Plut. *Sulla* 31.6.
- 14 Dio Cass. frag. 109.14–16.
- 15 Diod. Sic. 38/39.19.
- 16 Luc. 2.160ff.
- 17 Luc. 2.167.
- 18 Cicero’s neck: *Brut.* 313.
- 19 A full description of the case and its complexities is given by A. H. J. Greenidge, *The Legal Procedure of Cicero’s Time* (Oxford, 1901), in an appendix, pp. 531–41. See also H. J. Roby, *Roman Private Law in the Times of Cicero and of the Antonines* (Cambridge, 1902), vol. 2, pp. 453–85. A brief summary is given by T. E. Kinsey, ed., *Pro P. Quintio Oratio: Edited with Text, Introduction and Commentary* (Sydney, 1971), pp. 3–6; more information is found in the commentary. A brief but careful discussion of some of the case’s legal technicalities is given by Vincenzo Arangio-Ruiz, “Cicerone giurista,” in L. Alfonsi et al., *Marco Tullio Cicerone* (Firenze, 1961), pp. 203–6. Both the legal and the rhetorical aspects of the speech are discussed at length by Kazimierz Kumaniecki, “L’Orazione ‘Pro Quintio’ di Marco Tullio Cicerone,” in *Studi classici in onore di Quintino Cataudella* (Catania, 1972), vol. 3, pp. 129–57. The rhetoric of the speech is analyzed and compared to that of the other speech discussed in this chapter, the *Pro S. Roscio Amerino*, by Paola Militerani

- della Morte, *Studi su Cicerone oratore: Struttura della 'Pro Quintio' e della 'Pro Sexto Roscio Amerino'* (Napoli, 1977), with an extensive bibliography.
- 20 I take Cicero and Quintus' claim that there was no *vadimonium* to be untrue, but it is, of course, hard to be sure.
 - 21 Greenidge, op. cit., pp. 284–5.
 - 22 On Alfenus as *procurator* for Quintus, see Alan Watson, *The Law of Obligations in the Later Roman Republic* (Oxford, 1965), pp. 198–200.
 - 23 Gai. *Inst.* 4.29.
 - 24 Gai. *Inst.* 4.30.
 - 25 On the formulary system, see H. F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law*, 3rd edn (Cambridge, 1972), pp. 199–232. See also Greenidge, op. cit., pp. 150ff. A brief summary of the formulary system is given by Kinsey, *Pro Quintio*, in an appendix, pp. 217–18.
 - 26 On this last subject, see Alan Watson, *The Law of Property in the Later Roman Republic* (Oxford, 1968).
 - 27 Gaius seldom quotes an entire *formula*, focusing instead on their constituent parts, but the full *formulae* to which he refers are conveniently reconstructed by Francis de Zulueta, ed., *The Institutes of Gaius* (Oxford, 1962), vol. 2, pp. 259–60.
 - 28 Of course, this continuity is more evident if we imagine the *formula* itself as a physical object, i.e., as a written text. Such an assumption usually is made without comment, though de Zulueta, op. cit., vol. 2, p. 251, cautions that the evidence for the precise role of writing in the origins of the formulary system is slim and ambiguous. He adds, however, “No one doubts that for practical purposes the *formula* was a document.” Moreover, “Common sense . . . tells us that one would not have got far in the praetor's court without being required to put one's *formula* in writing.”
 - 29 Jolowicz and Nicholas, op. cit., p. 195, suggests that procedure *per sponsionem* “almost certainly goes back to the time of the *legis actiones*.”
 - 30 Greenidge, op. cit., p. 539, on the evidence of *Quinct.* 30 and 84.
 - 31 The apodosis of the *sponsio* could not declare judgment on the ownership of the property itself, as that question was still subject to further legal recourse by Naevius. Neither, apparently, could it refer to procedure, as “then the *missio* was invalid” or “then the praetor cannot proceed with the sale.” A concrete remedy by the defendant was required should he lose: this requirement was met by the nominal wager.
 - 32 *Quinct.* 84.
 - 33 Greenidge, op. cit., pp. 86–7; Jolowicz and Nicholas, op. cit., p. 96.
 - 34 See discussion and notes below on the *Lex Cornelia de proscriptione*.
 - 35 Giovanni Rotondi, *Leges publicae Populi Romani* (Milano, 1912), pp. 170–2.
 - 36 Jolowicz and Nicholas, op. cit., pp. 97–8.
 - 37 *Ibid.*, p. 87.
 - 38 On which see *ibid.*, pp. 91–4.
 - 39 For this reason, William Harris's conclusions about the role of written publicity in Roman law should be received with caution, as he says nothing about the *edictum perpetuum* and discusses only the inscription of statutory law: *Ancient Literacy* (Cambridge, Mass., 1989), pp. 163–5.
 - 40 On this complicated subject, see Jolowicz and Nicholas, op. cit., pp. 99–100, 248–55.
 - 41 Greenidge, op. cit., p. 84; Jolowicz and Nicholas, op. cit., pp. 201–2.
 - 42 *Quinct.* 57.
 - 43 *Inv. rhet.* 1.117; 2.116–56. *Auct. Her.* 1.19–23; 2.13–18.

- 44 Kinsey, *Pro Quintio*, p. 146, suggests that Naevius may have made “an innocent slip” by remembering the date only approximately.
- 45 It is strange that no real account of the development of the use of written evidence exists: see Chapter 3, n. 1.
- 46 A fourth element – the consultation of rhetorical and legal handbooks – is not explicit in the case but certainly should be added to any portrait of a young advocate. Legal handbooks are discussed extensively by Alan Watson, *Law Making in the Late Republic* (Oxford, 1974), pp. 134–68.
- 47 On *missiones in possessionem*, see Jolowicz and Nicholas, op. cit., pp. 228–9.
- 48 *Quinct.* 27; 50; 61. The *libelli* would have been posted both on the property and at Rome.
- 49 The *libelli* also served the practical purpose of alerting other creditors that now was the time to join in the claim (Greenidge, op. cit., pp. 284–5).
- 50 Kinsey, *Pro Quintio*, p. 87.
- 51 Militerni della Morte, op. cit., pp. 13, 15; Arangio-Ruiz, op. cit., pp. 204–5.
- 52 *RE* 1.1472 *Alfenus* 1; Hinard, op. cit., pp. 330–1 (no. 1). We learn that Alfenus was proscribed from *Quinct.* 70 and 76.
- 53 *Quinct.* 97.
- 54 Plut. *Sulla* 31.4.
- 55 On the date, see Marinone, p. 58.
- 56 T. E. Kinsey, “A Dilemma in the *Pro Roscio Amerino*,” *Mnemosyne* 19 (1966), p. 271. W. B. Sedgwick, “Cicero’s Conduct of the Case *Pro Roscio*,” *CR* 48 (1934): p. 13, “[I]t was not a case of saving Roscius by a technicality, but of securing his future.” Both Kinsey and Sedgwick advance this explanation in connection with other theories: see below.
- 57 This suggestion apparently was first made in print by Sedgwick, op. cit., p. 13.
- 58 Set out by Kinsey, “A Dilemma,” pp. 270–1. Hinard, op. cit., p. 57, presents the thesis as his own, apparently unaware of Kinsey’s earlier arrival at the same conclusion. Kinsey himself, though he refers to “[e]ditors of the speech,” does not mention the fact that Karl Halm, *Ciceros Reden für Sex. Roscius aus Ameria und über das Imperium des Cn. Pompeius* (Berlin, 1910), p. 24, n. 2, had already suggested that the speech confused *proscripti* with *adversarii*.
- 59 *Rosc. Am.* 126.
- 60 Michael Crawford, ed., *Roman Statutes* (London, 1996), vol. 2, p. 747 (no. 49).
- 61 *Rosc. Am.* 127.
- 62 On all this, see Hinard, op. cit., pp. 67–100, with references to earlier discussions.
- 63 *Rosc. Am.* 46.
- 64 A wry joke on the specious legality of the *Lex Cornelia* and the *Lex Valeria* should perhaps be read in *Schol. Gron. D* on *Rosc. Am.* 125 (Stangl, p. 314), though the key to the humor is the simplified account of the law’s import, which may be a result of the scholiast’s ignorance rather than any cleverly critical paraphrase.
- 65 “Once a measure had become law, it was both inscribed in public and placed in an official archive” (Crawford, op. cit., vol. 1, p. 25). “When laws were passed, there was no requirement either that they should be preserved in any archive or that they should be inscribed for public inspection and use” (Harris, op. cit., p. 165). The evidence cited by each is inconclusive. For the thesis that bronze inscriptions of the law served more as monuments than as records, see Callie Williamson, “Monuments of Bronze: Roman Legal Documents on Bronze Tablets,” *CA* 6 (1987): pp. 160–83.
- 66 Crawford, op. cit., vol. 1, pp. 293–6 (no. 14).
- 67 Harris, op. cit., pp. 165–6.
- 68 This does not necessarily mean that no copy of the law was anywhere available:

Cicero may be exaggerating when he claims to have been able to learn of its wording only by hearsay.

- 69 L. Richardson, *A New Topographical Dictionary of Ancient Rome* (Baltimore, 1992), pp. 343–4; *LTUR*, vol. 4, pp. 234–5 (F. Coarelli).
- 70 *RE* 4A.1958. See also Chapter 3.
- 71 *Rosc. Am.* 128.
- 72 See Chapter 3.
- 73 *Rosc. Am.* 21.
- 74 *Rosc. Am.* 26.
- 75 *OLD tabula*; *RE* 4A.1881–6. For a view, in light of archeological evidence, of the range of materials and formats used for Roman tablets, see Alan K. Bowman and J. David Thomas, *Vindolanda: The Latin Writing Tablets* (London, 1983), vol. 1, pp. 33–5.
- 76 Kinsey, “A Dilemma,” p. 271.
- 77 The term *codex* in place of *tabulae* was also used: *RE* 4A.1883; 4.160–1.
- 78 *OLD tabula* 7. Wills also were referred to simply as *tabulae* (*OLD tabula* 8): the fact that wills and accounts were doubtless the most important Roman documents on tablets readily explains the ellipsis.
- 79 In stark contrast is the one text relevant to the case Cicero can actually say he read, and which he has read to the jurors as evidence: the decree of the Amerian *decuriones* constituting the failed delegation to Sulla (*Rosc. Am.* 25). It is scarcely an accident that this one available document did not come from Rome.
- 80 *Rosc. Am.* 152.
- 81 *Rosc. Am.* 153.
- 82 *Plut. Cic.* 3.4; *Schol. Gron. D.*, Stangl, p. 301.

2 CICERO TAKES A BATH

- 1 *Greatness and Decline of Rome*, vol. 1 (New York, 1909), p. 8.
- 2 *Brut.* 316.
- 3 *Planc.* 65.
- 4 *Verr. II* 5.35.
- 5 *itineris faciendi causa* (*Planc.* 65) is awkwardly placed in the text and looks to me like an interpolation; according to Charlton T. Lewis and Charles Short, *A Latin Dictionary* (Oxford, 1991), the use of *iter* to specify “land journey” is not pre-Augustan.
- 6 On the general phenomenon, see John H. D’Arms, *Romans on the Bay of Naples: A Social and Cultural Study of the Villas and Their Owners from 150 BCE to AD 400* (Cambridge, Mass., 1970), especially Ch. 2.
- 7 *Ibid.*, pp. 198–200. On Cicero’s villas generally, see W. Warde Fowler, *Social Life at Rome in the Age of Cicero* (London, 1908), pp. 251–61.
- 8 *Planc.* 66.
- 9 *neminem a congressu meo, neque ianitor meus, neque somnus absterruit* (*ibid.*).
- 10 *Ibid.*
- 11 *Plut. Cic.* 7.3.
- 12 Frank Hewitt Cowles, *Gaius Verres: An Historical Study*, *Cornell Studies in Classical Philology* 20 (Ithaca, 1917), p. 189.
- 13 Lily Ross Taylor, *Party Politics in the Age of Caesar* (Berkeley, 1949), p. 110.
- 14 *Verr. I* 33.
- 15 *Verr. I* 56.
- 16 *Scaur.* 25–6.
- 17 *Verr. II* 1.16.
- 18 *Verr. II* 4.138.

- 19 *mandata, legatos, litteras testimoniaque (ibid.).*
- 20 *eorum tabulas exquirebam, iniurias cognoscebam (Verr. II 4.137).* The conjunction of documents and *iniuriae* also occurs at *Verr. I 6: omnium populorum privatorumque litterae iniuriaequae*. Cicero may have had trouble keeping the Romans of Syracuse focused on their Verrine complaints if, as seems probable, it was during one of their meetings that he was told (*Off. 3.58–60*) the old story of an *eques Romanus* cheated decades earlier by a Greek of Syracuse.
- 21 *Verr. II 4.137.*
- 22 *Verr. II 2.50.*
- 23 *Verr. II 4.140.*
- 24 *Verr. II 4.142–4.*
- 25 *id non modo tum scripserunt, verum etiam in aere incisum nobis tradiderunt (Verr. II 4.145).*
- 26 On this, see Jorma Kaimio, *The Romans and the Greek Language. Commentationes Humanarum Litterarum* (Helsinki, 1979), pp. 112–13.
- 27 *Verr. II 4.148.*
- 28 *Verr. II 4.149.*
- 29 *dat amico suo cuidam negotium, qui tum magister erat eius societatis, ut diligenter caveret atque prospiceret ne quid esset in litteris sociorum quod contra caput suum atque existimationem valere posset (Verr. II 2.173).*
- 30 *Verr. II 2.182.* For *exempla litterarum* we would say “copies of the texts.”
- 31 *Verr. II 2.185.*
- 32 *Verr. II 2.186.*
- 33 *Verr. II 2.187.*
- 34 The specific procedure was known as *in ius vocatio*, on Cicero’s use of which A. H. J. Greenidge, *The Legal Procedure of Cicero’s Time* (Oxford, 1901), p. 145 notes, “The cases in which Cicero, as collector of evidence against Verres, employed the *in ius vocatio* for the purpose of procuring the production of documents were the result of a right given by the criminal procedure of the time; but his summons would have been ineffectual had not his inquiries been supported by the then governor of Sicily.” Greenidge fails to notice, however, that it is not access to the documents which Cicero demands, but rather explanation, and that nothing Cicero says suggests that Metellus compelled Carpinatius to answer – by the time Cicero had presented his case, the truth was evident to all.
- 35 *Verr. II 2.189–90.*
- 36 *Verr. II 2.190.*
- 37 For this and other instances of Ciceronian humor, see Anthony Corbeill, *Controlling Laughter: Political Humor in the Late Roman Republic* (Princeton, 1996). This particular joke is explained on pp. 94–5, n. 107.

3 MULTITUDO LITTERARUM

- 1 Nor is there any general account of the development of the use of written evidence in Roman trials; William V. Harris, *Ancient Literacy* (Cambridge, Mass., 1989), p. 164, suggests that there may be too little evidence, but in light of the present study, that seems overly pessimistic, at least for the Late Republic. Some post-Ciceronian material is collected by G. Pugliese, “La Preuve dans le procès romain de l’époque classique,” *Recueils de la Société Jean Bodin* 16 (1964), pp. 333–40. The lack of attention is broader than the question of written evidence: there exists no general account of the use of documents in the Roman world. Some material is collected by Harris, *op. cit.*, but always for the specific purpose of demonstrating low literacy rates. For classical Athens, by contrast, we have an excellent study by Rosalind Thomas, *Oral Tradition and Written Record in Classical Athens* (Cambridge, 1989), pp. 34–93. Thomas provides a more

- theoretical discussion of some of this material in *Literacy and Orality in Ancient Greece* (Cambridge, 1992), in which she also provides an epilogue (pp. 158–70) which points the way for similar work on the Roman world. Also now available is James P. Sickinger, *Public Records and Archives in Classical Athens* (Chapel Hill, 1999).
- 2 Aetna, *Verr. II* 3.105; Agyrium, 3.74; Amestratus, 3.88; Bidis, 2.60; Halaesa, 3.171, 173; Hybla, 3.102; Messana, 5.43, 48; Segesta, 4.79; Syracuse, 4.140ff., 5.147, 164 (these last two are prison rolls; the phrase used by Cicero – *litterae Syracusanorum* – suggests he is trying to elevate them to the authoritative status of *litterae publicae*, but they clearly are to be distinguished from the documents kept in the *aerarium* by the Syracusan senate); Thermae, 2.90, 3.99; Tyndaris, 4.92.
 - 3 *Verr. II* 1.88.
 - 4 *Verr. II* 1.57.
 - 5 Known to me are *Flac.* 23; 34; 74; and *Att.* 113 = 5.20.9. (Cf. *TLL* 7.2.1521.34–7.) The first three concern the public records of Greek cities; the fourth is sent home from Cilicia by Cicero. The significance of the fact that all four originate in the Greek world will be made clear below.
 - 6 *CIL* 1².583; M. H. Crawford, *Roman Statutes*, vol. 1 (London, 1996), pp. 39–112 (no. 1), with a thorough discussion of the inscription, the law, its date, etc., with all earlier bibliography. See also below.
 - 7 *Ibid.*, vol. 1, p. 69 (no. 1), line 34.
 - 8 The expression appears in the (inserted) indictment (*γραφή*) of Ctesiphon for proposing a gold crown for Demosthenes (*Dem. De cor.* 55). Cicero's occasional use of *civitatis/-um* in addition to or in place of *publicae* might provide an alternate translation of the Greek adjective *δημόσια*; see below.
 - 9 *RE* 4A.1957–62.
 - 10 *Litterae* meaning “epistle” appears in Plautus; its use for “literature” is not confirmed by the *TLL* before Cicero.
 - 11 The *tabulae publicae* of the *Lex repetundarum* for the recording of eligible jurors (see n. 14, below) are almost certainly an *album*. But by the time *tabulae publicae* can be referred to as *codices*, they are simply bundles of wax tablets (*Sen. Dial.* 10.13.4). It would perhaps be most accurate to say that *tabulae* of all sorts – from painted boards to tablets both waxed and not – were the normal support of documentary texts in Rome. (Egypt and spreading use of papyrus documents in the Roman world are a later matter that cannot be taken up here.)
 - 12 See Vincenzo Arangio Ruiz and Alessandro Olivieri, *Inscriptiones Graecae Siciliae et infimae Italiae ad ius pertinentes* (Milano, 1925, reprinted Rome, 1965), pp. 71–127, plates; Maria Teresa Manni Piraino, *Iscrizioni greche lapidarie del Museo di Palermo* (Palermo, 1973), pp. 147–54, plates. See the latter for the controversial matter of the date, which, however, is unlikely to be more than a few decades before Verres' tenure in Sicily.
 - 13 *Verr. II* 4.146, 134.
 - 14 *Verr. II* 2.104, 3.83.
 - 15 *Verr. II* 1.57.
 - 16 Likewise, the generic reference in the *Lex repetundarum* to (possibly Greek) “public records” for use as evidence employs the term *litterae publicae*, whereas at line 15 the praetor's official list of eligible jurors for the court is to be set down in *taboleis publicis*.
 - 17 Compare to all of the above Cicero's reference at *Arch.* 8 to the destruction by fire during the Social War (90–88 BCE) of the *tabulae publicae* of the Greek city of Heraclea, in Lucania.

- 18 Together with the will, also occasionally called, simply, *tabulae*.
- 19 On the law, for which the Verrines are the major source, see J. Carcopino, *Le Loi de Hiéron et les romains* (Paris, 1914). More recent, and focusing specifically on Cicero (even more than the fact that he is the major source for what the law requires), is R. T. Pritchard, "Cicero and the *Lex Hieronica*," *Historia* 19 (1970): pp. 352–68. See also M. Mazza, "Recenti prospettive sull'economia agraria siciliana in età ciceroniana," *Ciceroniana* 4 (1980): pp. 223–38. See also n. 22, below.
- 20 *Verr. II* 3.14.
- 21 *Verr. II* 3.147.
- 22 Geoffrey Rickman, *The Corn Supply of Ancient Rome* (Oxford, 1980), p. 38. Rickman reproduces almost exactly the account by V. M. Scramuzza in Tenney Frank, ed., *An Economic Survey of Ancient Rome*, vol. 3 (Baltimore, 1937), pp. 237–8.
- 23 Rickman, op. cit., p. 37.
- 24 *Verr. II* 3.120.
- 25 *Verr. I* 7 (*legationes cum publicis auctoritatibus*); 33 (*privatis publicisque litteris auctoritatibusque accusamus*); 56 (*tabulis privatis publicisque auctoritatibus*). Pseudo-Asconius glosses the first as *publicis litteris*, but the second as *confirmationibus eloquentiae* (written support for oral testimony?).
- 26 *Verr. I* 6, *Verr. II* 1.10.
- 27 *Verr. II* 2.141.
- 28 On such combinations, see below. In *Flac.* 23, Cicero contrasts nonexistent *litterae privatae* with inaccessible *litterae publicae*; here, too, the former phrase is a product of the juxtaposition.
- 29 Specifically mentioned are Agyrium (*Verr. II* 3.74), Acesta (3.83), Lipara (3.85), Tissa (3.87), Amestratus (3.88), Thermae (3.99), Imachara (3.100), Aetna (3.105). For the last, Cicero provides especially vivid clues to the way in which the testimony was presented to the court. Cf. *RE* 5A.1052–3.
- 30 On oral and written *testimonia publica*, cf. A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford, 1901), pp. 489–90.
- 31 In addition to those *loci* given above for individual Sicilian cities, *testimonium publicum* is mentioned by Cicero at *Verr. II* 2.14, 114, 120, 141, 155.
- 32 F. Coarelli's phrase ("archivi dello stato") in *LTUR*, vol. 4, p. 234. References to the Aerarium of Rome in the Verrines appear at *Verr. II* 1.57, 78, 93, 3.83, 167. Cicero uses *aerarium* in reference to an archive at Syracuse at *Verr. II* 4.140.
- 33 *Haec fuit veterum diligentia, ut quod quisque de subiugata provincia per triumphum apportavisset, id perscriptum in tabulis in aerario reponendis conservaretur* (Pseudo-Asconius on *Verr. II* 1.57).
- 34 *Verr. II* 1.57. In the passage Cicero refers to the accounts alternately as *litterae publicae*, *tabulae publicae*, and *rationes*.
- 35 On the dates and titles of Verres' offices, see T. R. S. Broughton, *The Magistrates of the Roman Republic*, vol. 2 (New York, 1952), pp. 61ff.
- 36 *Verr. II* 1.36.
- 37 *audistis quaestoriam rationem, tribus versiculis relatum* (*Verr. II* 1.98).
- 38 See Frank Hewitt Cowles, *Gaius Verres: An Historical Study*, *Cornell Studies in Classical Philology* 20 (Ithaca, 1917), pp. 5–6.
- 39 *Verr. II* 1.98; cf. 1.77.
- 40 *an tuis solis tabulis te causam dicturum existimasti* (*Verr. II* 1.102).
- 41 *Verr. II* 1.100.
- 42 *Verr. II* 1.99. Verres' propraetorial *rationes* are mentioned obliquely at *Verr. II* 3.67, where Vettius promises, in a letter to company members, to watch over Verres' shoulder as he submits his accounts to the Aerarium.

- 43 Cicero had a personal stake in all of this, as will become clear in Chapter 5.
- 44 *Verr. II* 1.60.
- 45 The form is the basic one for any *codex accepti et expensi*; cf. *RE* 4.160–1. Fragments of an apparent *codex accepti et expensi* appear in Giuseppe Camodecca, *Tabulae Pompeianae Sulpiciorum* (TPSulp.): *Edizione critica dell'archivio puteolano dei Sulpicii* (Roma, 1999), pp. 205–6 (TPSulp. 94–95).
- 46 Stangl, p. 238.
- 47 Q. Tadius (*Verr. II* 1.128, 4.31), Symmachus (3.93), Heius (4.12).
- 48 *Verr. II* 1.128.
- 49 *posco rationes, inspicio litteras* . . . (*Verr. II* 3.171); *recita RATIONES HALAESI-NORUM* (3.175).
- 50 *Verr. II* 3.181. The OLD makes *cerarium* “a charge for sealing” but since the adjective and substantive *cerarius* regards wax tablets, it seems equally likely that the charge was nominally for the writing surface rather than for a seal.
- 51 *Verr. II* 3.112.
- 52 *Verr. II* 3.107.
- 53 *Verr. II* 3.104–19.
- 54 *Verr. II* 3.10.
- 55 *Verr. II* 4.36. The end: *si, quas tabulas profers, in his quae habes quo modo habeas scriptum non est, horum autem temporum cum te plurimas res emisse dicis tabulas omnino nullas profers, nonne te et prolati et non prolati tabulis condemnari necesse est?* The passage confirms that Cicero does have some of Verres’ accounts, but not those for the crucial period in Sicily.
- 56 *Verr. II* 2.19.
- 57 *Verr. II* 2.24.
- 58 *Verr. II* 2.56, 4.41.
- 59 *Verr. II* 5.15.
- 60 *Verr. II* 3.225.
- 61 *Verr. II* 3.189.
- 62 *Verr. II* 2.64, 140; 4.148.
- 63 *Verr. II* 4.141.
- 64 *Verr. II* 4.58.
- 65 *Verr. II* 5.168.
- 66 *Verr. II* 2.64, 4.148. On them, see below.
- 67 *Verr. II* 3.44–6, 121.
- 68 *aratores qui reliqui erant* (*Verr. II* 3.124).
- 69 *Verr. II* 3.122.
- 70 *Verr. II* 3.154. Cicero comments that the letter is in the sender’s own hand (*Timarchidi manu scripta*), by which he probably means to emphasize more than just its authenticity: the *libertus* Timarchides styles himself “Attendant of Verres” in the greeting and indeed acts in Verres’ stead, but his own position is too low to enable him to dictate his letters to a secretary. Despite his fondness for quoting Plautus, Cicero fails to allude to the scene in the *Persa* in which a character reads from a letter from another “Timarchides” (lines 501ff.).
- 71 *Verr. II* 3.167.
- 72 *Verr. II* 3.168.
- 73 *Verr. II* 3.154.
- 74 *quas [litteras] ego Syracusis apud Carpinatium in litterarum allatarum libris, Romae in litterarum missarum apud magistrum L. Tullium, familiarem tuum, inveni* (*Verr. II* 3.167).
- 75 Compare the analogous practices of Cicero and Atticus for the received letters of their own mutual correspondence, described at Att. 177 = 9.10.4 and in Nepos’

- life of Atticus (16.3). In both instances the word used is *volumen*: see the discussions in Nicholas Horsfall, ed., *Cornelius Nepos: A Selection, Including the Lives of Cato and Atticus* (Oxford, 1989), and in Shackleton Bailey, vol. 1, p. 60 (where the reference to book “X” should be corrected to “IX”).
- 76 *Tusc.* 5.64–6.
- 77 *Verr.* II 4.132.
- 78 *Verr.* II 4.74ff.
- 79 On the general topic of Greek art as Roman booty, see Margrit Pape, *Griechische Kunstwerke aus Kriegsbeute und ihre öffentliche Aufstellung in Rom von der Eroberung von Syrakus bis in augusteischer Zeit* (Ph.D. diss., Hamburg, 1975).
- 80 *Verr.* II 4.74.
- 81 *Verr.* II 4.78.
- 82 *Verr.* II 4.79.
- 83 *quae vobis locatio ex publicis litteris Segestanorum priore actione recitata est* (*Verr.* II 4.79).
- 84 *Verr.* II 4.80.
- 85 *Verr.* II 4.82.
- 86 *nihil in religiosissimo fano praeter vestigia violatae religionis nomenque P. Scipionis reliquit* (*Verr.* II 4.97); repeated in Cicero’s closing prayer in book 5: *teque, sanctissima mater Idaea, quam apud Enguinos augustissimo et religiosissimo in templo sic spoliata reliquit ut nunc nomen modo Africani et vestigia violatae religionis maneat* (5.186).
- 87 *Verr.* II 2.158.
- 88 *Verr.* II 2.160.
- 89 Monuments are mentioned at *Verr.* II 2.150, 154, 167, 4.138 (that of the senate-house in Syracuse, mentioned in Chapter 2).
- 90 *Verr.* II 2.150; cf. 167. Cicero says, *propter aedem Volcani*. The *Aedes Volcani* was in the Campus Martius; Cicero would thus use *video* in a figurative sense. Well in sight of the trial, however, was the *Volcanal* or *Area Volcani*, site of at least some sculptural dedications. The possibility that Verres’ statue was set up near the second seems not to have been considered: *Aedes Volcani* could be an imprecision by Cicero or a corruption of *Area Volcani* or an interpolated erroneous gloss for *Volcanal*. Cf. L. Richardson, *A New Topographical Dictionary of Ancient Rome* (Baltimore, 1992), p. 422.
- 91 *Verr.* II 2.154.
- 92 *Verr.* II 2.112.
- 93 *Ibid.* We already have seen another bronze tablet recording a decree by the senate of a Sicilian city: that declaring Cicero and his cousin official guests of Syracuse.
- 94 *Verr.* II 2.115. Despite Cicero’s strange way of telling the story, it seems unlikely that he means that Verres had Sthenius’ name engraved on the statue as a disingenuous token of gratitude; rather, the wording (*in quo Sthenii Thermitani nomen ascriptum est*) suggests a tag already in place recording the owner. Alternatively, a nominal dedication by Sthenius could have masked the fact that the statue was repayment by Verres for services by the temple slaves who often assisted him, but this seems the less likely interpretation.
- 95 *Verr.* II 2.116.
- 96 The story is told at *Verr.* II 4.103–4.
- 97 Two other inscriptions are mentioned in the speeches but bear only indirectly on the case: the signature of Myro inscribed on the thigh of a statue of Apollo (*Verr.* II 4.93) and the base of a statue of Sappho inscribed with a Greek epigram (4.127). Sicily’s age-old dedication to Ceres and Libera, Cicero reports, *constat ex antiquissimis Graecorum litteris ac monumentis* (4.106): *monumenta* could be

“histories,” but, if “monuments,” Cicero may be thinking in part of inscribed ones. Further discussion of many of Cicero’s references to inscriptions, in the Verrines and elsewhere, may be found in Arthur Stein, *Römische Inschriften in der antiken Literatur* (Prague, 1931).

- 98 *Verr. II* 1.119. Cicero may use the plural *codices* for rhetorical effect, but a praetor’s “register” (*codex*, Greenidge, op. cit., p. 439) may well have consisted of multiple bundles (*codices*) of tablets. (On *codices* as bundles, see Alan K. Bowman and J. David Thomas, *Vindolanda: The Latin Writing Tablets* (London, 1983), Vol. 1, p. 42.) Neither *OLD* or *TLL* is much help on this technical use of *codex* (*RE* 4A.1959 is somewhat more helpful), obviously related to the later use of *codex* to designate a collection of laws. Cicero also refers to Verres’ *edictum perpetuum* as a *codex* at *Verr. II* 3.26 (see section on Edicts, below).
- 99 *Verr. II* 1.157.
- 100 *Clu.* 91 (*codex*). See discussions and more references to the Verrines and the *Pro Cluentio* in Cowles, op. cit., p. 26, and Greenidge, op. cit., pp. 438–9. The case is also described by Pseudo-Asconius (Stangl, pp. 255–6).
- 101 The evidence is discussed at length beginning at *Verr. II* 1.63.
- 102 *Verr. II* 1.79, 83.
- 103 *Verr. II* 2.106.
- 104 *CIL* 6.314.
- 105 Concerning the activities of past Sicilian governors, Cicero also presents as evidence an official record of the tithe-sales (*decumae venditae*) of C. Norbanus – but this presumably is extracted from his *rationes ad aerarium* (*Verr. II* 3.117).
- 106 For more detailed discussion of this terminology, the reader is referred to the lengthy treatment in Greenidge, op. cit., pp. 86ff. Cf. *RE* 5.1940–8.
- 107 In the Verrines, Cicero uses both *caput* (*Verr. II* 1.111, 118) and *clausula* (*Verr. II* 3.35) to designate an individual clause of an edict. Cf. Greenidge, op. cit., p. 87.
- 108 For example, *in re vetere edictum novum* (*Verr. II* 1.115), *novitas iniquitasque decretorum* (*Verr. II* 1.125), *res novas abs te prolatas et inventas* (*Verr. II* 3.116), *edictum repentinum* (*Verr. II* 3.37), *tuis novis edictis et iniquissimis institutis* (*Verr. II* 3.150).
- 109 *scio te edicta superiorum omnium correxisse* (*Verr. II* 3.16).
- 110 *Verr. II* 3.25. A number of “close readings” of the *edictum* are given at *Verr. II* 1.104–18, more at *Verr. II* 2.33–4; 3.35. Cicero’s vague expression *praetoris litterae et rerum decretarum et frumenti imperati* (*Verr. II* 5.56) may refer in part to the *edictum*.
- 111 *Verr. II* 1.118. Cicero attacks Verres for omitting a clause from his urban edict in the Sicilian redaction at *Verr. II* 1.112.
- 112 Greenidge, op. cit., pp. 87–8.
- 113 *Verr. II* 3.26.
- 114 *Verr. II* 2.21, 25, 36.
- 115 According to another charge, Verres deprived a rightful heir of his inheritance in a case of intestate succession (*Verr. II* 1.114–18). He did so by exploiting an absurd clause in his own *edictum* awarding possession to practically any claimant in the absence of a will. This leads Cicero to suggest, in a curious non sequitur, that Verres will overturn an existing will if only a “single seal” is missing.
- 116 *Verr. II* 5.50.
- 117 *Verr. II* 5.112.
- 118 *Ibid.*
- 119 *Ibid.*
- 120 *illud video esse dictum* – Cicero suggests that he is quoting somewhat haphazardly directly from a copy of the speech he has before his eyes.

- 121 Editors variously emend the *nos* of the best MSS., but nothing is really wrong with it other than the vague and pathetic claim it expresses – inappropriate, perhaps, for Cicero’s own speech, but he is quoting.
- 122 *Verr. II* 5.54. *RE* 4.733–4 makes *commentarius* in this passage a synonym for *tabulae publicae*. But Cicero provides no suggestion that he has *tabulae publicae* from Verres’ term in Sicily (he certainly does not have his *rationes*; see above), and this is his only reference to Verres’ *commentarius*. The most likely explanation seems to be that, by book 5, Cicero gives in to the fictional character of the “speeches” he is writing to the point of abandoning full fidelity to the actual trial; pretending to have Verres’ *commentarius* facilitates an argument that would never need to stand in court – Cicero’s reading public would never be the wiser. On the meaning of *commentarius* generally (though he does not discuss the reference in the Verrines), see Franz Bömer, “Der *Commentarius*. Zur Vorgeschichte und literarischen Form der Schriften Caesars,” *Hermes* 81 (1953): pp. 210–50.
- 123 *Verr. II* 1.91, at which Pseudo-Asconius provides a gloss on the term; 4.30, in which Cicero refers to *inanes* (“worthless”?) *sygraphae* already described to the jury by his witnesses, but this is, in fact, the first and only reference to the event – a rare indication of evidence presented at the trial but not discussed in the speeches. On Roman *sygraphae* generally, see *RE* 4A.1384–7.
- 124 *Verr. II* 4.37, 43.
- 125 *Verr. II* 3.92. *Litterae* in this sense is to be compared to *imperium*, an oral order given directly, as at *Verr. II* 2.120, where Cicero claims that no Sicilian was given local senatorial rank without Verres’ express command: *nisi istius imperio aut litteris*.
- 126 *Verr. II* 2.47.
- 127 *Verr. II* 2.127.
- 128 *quorum renuntiatio legibus illorum litteris publicis mandata est* (*Verr. II* 3.73).
- 129 *nihil quod iste publice Romam scripserit* (*Verr. II* 5.8).
- 130 *Verr. II* 4.92, 5.102. This is the clear meaning of the term in the second instance, where it refers to sealed statements made under coercion to be used by Verres if he ever needed to defend his role in the naval disaster against the pirates. The *OLD* defines *testificatio* generically as “the attesting or solemn affirming (of a fact, esp. in a court of law),” but Egidio Forcellini, *Totius Latinitatis Lexicon*, 3rd edn (Prato, 1858–79), vol. 6, p. 77, establishes with more abundant *loci citati* that it was used primarily for statements set down in written form. Emilio Costa, *Cicerone giureconsulto* (Bologna, 1927), vol. 2, p. 145, takes both references in the Verrines as being to written statements and adds that such testimony constituted “un mezzo di prova ammissibile nei giudizi del tempo del Nostro [*Cicerone*], benchè d’autorità incomparabilmente inferiore a quello che consiste nelle dichiarazioni prestate in giudizio dai *testes* che compaiono personalmente,” but he offers no evidence to support this last claim.
- 131 *Verr. II* 2.63, 138.
- 132 *de qua muliere versus plurimi supra tribunal et supra praetoris caput scribebantur* (*Verr. II* 3.77).
- 133 *Verr. II* 1.97.
- 134 *Verr. I* 6.
- 135 *Verr. I* 20.
- 136 *Verr. I* 33.
- 137 *Verr. I* 56.
- 138 *Verr. II* 1.10.
- 139 *Verr. II* 1.16.
- 140 *Verr. II* 4.138.

- 141 *Verr. II* 5.10.
- 142 *Verr. II* 2.50. This phrase is not included in the above list because Cicero is referring only to the set of evidence for a specific argument. Other similar phrases referring to parts of the body of witnesses and texts may be found at *Verr. II* 3.166, 169, 225, 4.91, 5.44.
- 143 *Verr. II* 3.146. Peterson (*OCT*) inserts *res* on the strength of a marginal reading by Lambinus, but Cicero's point may be stronger without it.
- 144 On this and other chronological matters, see Marinone, pp. 65–7, with references to other discussions.
- 145 *Verr. I* 6.
- 146 *Verr. II* 1.16.
- 147 Crawford, *Roman Statutes*, vol. 1, p. 69 (no. 1), line 34. *Poscere* is Crawford's supplement; Mommsen had proposed *producere*, but Crawford argues that *producere* is only used with people" (p. 104) and compares the use of *litteras poscere* at, for example, *Verr. II* 4.36. Crawford's supplement has the important merit of allowing the clause to give the prosecutor explicit right to collect as well as to present written evidence; the Gracchan *Lex repetundarum* would thus be consistent with what Cicero explicitly tells us about the later but substantially similar Sullan version under which he is operating (see below).
- 148 *Verr. II* 4.149.
- 149 *Verr. II* 2.64.
- 150 *Verr. II* 4.148. A discussion of *litterae commendaticiae* appears in W. Glynn Williams, ed. and trans., *Cicero: The Letters to His Friends* (Cambridge, Mass., 1972); see also P. Fedeli, "L'epistola commendatizia tra Cicerone e Orazio," *Ciceroniana* 10 (1998): pp. 35–53.
- 151 *Verr. II* 4.138.
- 152 *Verr. II* 4.137.
- 153 *Verr. II* 3.154.
- 154 *Verr. II* 1.50, 149, 2.182, 4.140, 149. The form *consignare* at *Div. Caec.* 28 is the result of the context: Caecilius, Cicero claims, will seal up records of Verres' praetorship *along with* those that incriminate his own quaestorship.
- 155 The only purpose of Cicero's affixing his own seal would be to protect the document from corruption once in his protection – that is, by members of his own staff. Though a prosecutor could indeed have such concerns (cf. Cicero's worries about giving Caecilius access to his *capsae*), it would scarcely make sense to call the jury's attention to this danger by mentioning the practice.
- 156 *Verr. II* 4.140.
- 157 *Verr. II* 1.50. L. H. G. Greenwood, ed. and trans., *Cicero: The Verrine Orations*, vol. 1 (Cambridge, Mass., 1928), p. 174, is wrong in claiming that Cicero went "to seal up, and secure against removal, objects that might be required as evidence for the trial." Rather, Cicero casually noted the presence of the objects while he had access to Verres' house for the purpose of sealing documents.
- 158 *Verr. II* 1.149.
- 159 *vestigia* at *Verr. II* 2.116 (where an additional connection between sex and writing is introduced into the metaphor), 4.53, 5.186.
- 160 *Verr. II* 4.53.
- 161 *Inv. rhet.* 2.115ff.
- 162 See, for example, *Verr. II* 2.22.
- 163 For more on *scriptum* and *sententia*, see *Cic. Part. or.* 130–8.
- 164 *Fam.* 351 = 16.26.2.

4 THE TRIAL OF VERRES

- 1 *Div. Caec.* 31, 47, 49. On the precise meaning of *scriptio*, see W. E. Heitland and Herbert Cowie, *M. T. Cicero in Q. Caecilius Divinatio et in C. Verrem Actio Prima, with Introduction and Notes* (Cambridge, 1876), pp. 52–3.
- 2 A. N. Sherwin-White, "The Political Ideas of Gaius Gracchus," *JRS* 72 (1982), p. 21. For a brief, general description of the use of writing in the exercise of justice in Rome, see Fergus Millar, *The Crowd in Rome in the Late Republic* (Ann Arbor, 1998), p. 45. See also Chapter 1 of the present work.
- 3 *Verr. II* 2.79. On Sullan *decuriae*, see A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford, 1901), p. 438, who rightly points out that *altera decuria* in Cicero's remark refers to the specific (second) *decuria* to which Verres belonged. Cicero goes on to ask, "Shall a judicial ballot [*iudicialis tabella*] be entrusted to this man?"
- 4 *libelli nominum vestrorum consilii huius in manibus erant omnium* (*Verr. I* 17).
- 5 *Schol. Gron. B* on *Verr. I* 17 (Stangl, pp. 335–6). More information is given in Pseudo-Asconius' comment on the same passage (Stangl, p. 210).
- 6 M. H. Crawford, *Roman Statutes*, vol. 1 (London, 1996), p. 70 (no. 1), line 51.
- 7 William V. Harris, *Ancient Literacy* (Cambridge, Mass., 1989), p. 168.
- 8 The use of tablets marked A/C and the like in other criminal cases obeyed the same principle. A *denarius* of Q. Cassius of 55 BCE commemorates the sensational trial of three Vestal Virgins in 113 by depicting the temple of Vesta fronted by a curule chair with the attributes of an urn and a tablet boldly inscribed AC; see M. H. Crawford, *Roman Republican Coinage* (Cambridge, 1974), nos. 428/1 and 428/2. The ballot and the urn into which it was cast offer not a glimpse of the trial from the point of view of a juror but, instead, a literal representation of what the audience witnessing this or any other criminal trial was there to watch.
- 9 We learn of the circumstances from Pseudo-Asconius on *Div. Caec.* 24 (Stangl, p. 193). Other certain references at *Verr. I* 17, 40; echoes at *Verr. II* 2.79; 4.104; 5.41, 173.
- 10 *Div. Caec.* 24. The meaning of Cicero's somewhat obscure wording seems to be that, for the *divinatio*, Hortensius does not need to use color-coded wax (as he did in 75 BCE), as these votes, cast all together, were not fully secret, and his agents thus could easily observe how each juror voted.
- 11 *Verr. I* 40.
- 12 Cicero returns to the jury's tablets near the end of book 5 in a metaphor that, though somewhat unfelicitous, is interesting for the way it extends the image of recording one's votes, making ballots of the jurors themselves: "I do not want the jurors I approved and selected to walk around in this city so marked [*notati*] by the absolution of this man that they seem to have been smeared not with wax but with mud" (*Verr. II* 5.173).
- 13 On the location of the tribunal, see F. Coarelli, *Il Foro Romano II: Periodo repubblicano e augusteo* (Roma, 1985), p. 180.
- 14 *Div. Caec.* 51.
- 15 *Verr. I* 54 and Pseudo-Asconius (Stangl, p. 222).
- 16 In book 5 Cicero claims to have proven Verres' guilt to the entire world "in the few hours of the first *actio* (*paucis horis primae actionis* (*Verr. II* 5.177)). Cicero is by this point thinking only of his reading public, for whom the *actio prima* was merely Cicero's initial speech, not the subsequent presentation of evidence. For the theoretical delivery time of book 5 itself, see *Verr. II* 5.159.
- 17 L. H. G. Greenwood, ed. and trans., *Cicero: The Verrine Orations*, vol. 1 (Cambridge, Mass., 1928), p. xix, suggests that the published speeches for the second *actio* are in part pastiches of short speeches Cicero actually gave in introduction of his

- evidence. But now that we can fully appreciate the quantity of Cicero's evidence, this seems highly unlikely, as each of the nine days in court would have lasted five hours or so (from three to sunset), leaving little time for rhetorical elaboration.
- 18 *Verr. II* 1.71; 5.155.
 - 19 Pseudo-Asconius on *Verr. I* 56 (Stangl, p. 223).
 - 20 Cicero and Caecilius had put the *quaestio* in motion by presenting themselves as potential prosecutors in early January; the *divinatio* was conducted around the twentieth of that month. See Marinone, p. 65.
 - 21 *Dic dic, quaeso, clarius* (*Verr. II* 1.143, 3.106); *dic etiam clarius* (3.175). Cicero again and again uses the imperative *recita* to instruct the clerk to read. On two occasions he uses the first person. On the first, he really means "I cause to be read" (*Verr. II* 2.73). On the second, he first has the clerk read a letter *in toto* (*recita*); then he himself quotes the letter line by line in his analysis, leading him to use the first person "I read the letter" in the conclusion of his argument (*Verr. II* 3.157).
 - 22 *Verr. II* 1.27.
 - 23 *Verr. II* 3.26.
 - 24 It should also be remembered that even oral testimony at the trial was recorded by the clerk for eventual reading – if required – during the second *actio*.
 - 25 *Verr. II* 1.158.
 - 26 Pseudo-Asconius on *Verr. II* 1.157 (Stangl, p. 255). Cicero also mentions the scandal in passing at *Verr. I* 29 and in the *Pro Cluentio*. See the (somewhat unsatisfactory) discussion in Frank Hewitt Cowles, *Gaius Verres: An Historical Study*, *Cornell Studies in Classical Philology* 20 (Ithaca, 1917), p. 26.
 - 27 *Verr. II* 2.92.
 - 28 *Verr. II* 2.101.
 - 29 *Verr. II* 2.104. Cicero again mentions these erasures at 3.41.
 - 30 Cicero's plural imperative *explicate* for the unrolling of the papyrus-roll facsimile of Carpinatius' *tabulae* suggests that two people were needed for the dramatic exhibition.
 - 31 On the the inspection of written documents by the *index* "if there were any doubt about their genuineness, or if their contents demanded closer investigation," see A. H. J. Greenidge, *op. cit.*, p. 274.
 - 32 *Verr. II* 3.83. A similar manipulation of accounts occurs at *Verr. II* 3.77.
 - 33 *Verr. II* 5.48.
 - 34 *Verr. II* 3.181, 198.
 - 35 *Verr. II* 5.102.
 - 36 *Ibid.*
 - 37 *Verr. II* 2.60.
 - 38 *Verr. II* 2.90.
 - 39 *Verr. II* 1.156; 2.20; 3.122.
 - 40 *Verr. II* 3.175.
 - 41 *Verr. II* 1.128.
 - 42 For an earlier instance of *virī boni*, see *Rosc. Am.* 146. On the term, see Joseph Hellegouarc'h, *Le Vocabulaire latin des relations et des partis politiques sous la République* (Paris, 1972), pp. 484–95.
 - 43 *Verr. II* 1.137. Cicero earlier had emphasized Chelidon's perverse proximity to power by claiming that Verres had risen directly from Chelidon's bed to accept the trappings of his praetorship (*Verr. II* 1.104, explained by Greenwood, *op. cit.*, p. 232, note *a*).
 - 44 *Verr. II* 2.108.
 - 45 *Verr. II* 2.134–6.
 - 46 *Verr. II* 2.135.

- 47 *Verr. II* 2.136.
48 *Verr. II* 3.126.
49 *Verr. II* 3.176.

5 LITTERAE MANENT

- 1 Plin. *HN* 31.6–8, source also for the following.
- 2 The poem is quoted at Plin. *HN* 31.8. The spring's virtues are recalled by Isidore of Seville, *Etym.* 13.13.2.
- 3 The Ciceronian papyri are collected by Robert Cavenaile, *Corpus papyrorum Latinarum* (Wiesbaden, 1958), pp. 70–96.
- 4 Tönnies Kleberg, "Commercio librario ed editoria nel mondo antico," in Guglielmo Cavallo, *Libri, editori e pubblico nel mondo antico*, 3rd edn (Roma, 1984).
- 5 Guglielmo Cavallo, "Testo, libro, lettura," and Paolo Fedeli, "I sistemi di produzione e diffusione," in Guglielmo Cavallo, Paolo Fedeli, Andrea Giardina, eds., *Lo spazio letterario di Roma antica*, vol. 2, 2nd edn (Roma, 1993).
- 6 Horst Blanck, *Das Buch in der Antike* (München, 1992), pp. 113–22.
- 7 Frederic G. Kenyon, *Books and Readers in Ancient Greece and Rome*, 2nd edn (Oxford, 1951). Briefer, but more up-to-date, is Raymond J. Starr, "The Circulation of Literary Texts in the Roman World," *CQ* 37 (1987): pp. 213–23. See also J. J. Phillips, *The Publication of Books in Rome in the Classical Period* (Ph.D. diss., Yale, 1981).
- 8 James N. Settle, *The Publication of Cicero's Orations* (Ph.D. diss., University of North Carolina at Chapel Hill, 1962).
- 9 Jane W. Crawford, *M. Tullius Cicero: The Lost and Unpublished Orations, Hypomnemata* 80 (Göttingen, 1984).
- 10 John J. Phillips, "Atticus and the Publication of Cicero's Works," *CW* 79 (1986): pp. 227–37. See also R. Sommer, "Pomponius Atticus und die Verbreitung von Ciceros Werken," *Hermes* 61 (1926): pp. 389–422, and, with caution, Jérôme Carcopino, *Les Secrets de la correspondance de Cicéron* (Paris, 1947), vol. 2, pp. 305–29.
- 11 Crawford, op. cit., pp. 4–5.
- 12 An exception should perhaps be made for published *contiones*. On the subject of just what the published copies of Cicero's speeches looked like, including their division (probably by Cicero himself) into *capita* or paragraphs, see Michael Shane Butler, *Litterae manent: Ciceronian Oratory and the Written Word* (Ph.D. diss., Columbia University, 2000), pp. 177–305.
- 13 Crawford, op. cit., pp. 10–11.
- 14 Wilfried Stroh, *Taxis und Taktik: Ciceros Gerichtsreden* (Stuttgart, 1975), pp. 31–54, who responds in turn to J. Humbert, *Les Plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris, 1925), who argues strongly that Cicero's published speeches corresponded only partially to those delivered.
- 15 *Ibid.*, p. 52.
- 16 George Kennedy, *The Art of Rhetoric in the Roman World, 300 BC–AD 300* (Princeton, 1972), pp. 162–3 (the Verrines), 176–81, 186, 202–3, 263, 276–77.
- 17 Richard Leo Enos, *The Literate Mode of Cicero's Legal Rhetoric* (Carbondale, 1988), p. 92. This brief quotation does scant justice to Enos's rich and subtle arguments. Unfortunately, his book came to my attention only when the present book was nearly finished; else it surely would have colored my arguments in this chapter more deeply. I am gratified, however, to find that his conclusions about publication generally and the Verrines in particular (pp. 59–77), though somewhat different in emphasis, are in substantial harmony with my own, especially in his diagnosis of the role of published oratory in the arbitration of eloquence.

- 18 Andrew M. Riggsby, *Crime and Community in Ciceronian Rome* (Austin, 1999), pp. 178–84.
- 19 Alan E. Astin, *Cato the Censor* (Oxford, 1978), pp. 134–7, 155–6. See also Kennedy, op. cit., pp. 57–60. Cato kept written copies of his speeches and published texts of at least two in the *Origines*; Cicero claims to have read more than 150 (*Brut.* 65), though it is not clear whether these were published by Cato or posthumously. On the publication of speeches in classical Greece, see Luciano Canfora, “L’Agorà: il discorso suasorio,” in Giuseppe Canfora *et al.*, eds., *Lo spazio letterario della Grecia antica*, vol. 1, tom. 1 (Roma, 1992), pp. 392–5; Guido Avezzo, “L’Oratoria Giudiziaria,” in *ibid.*, pp. 414–17. See also the apparently overlooked chapter on “Kallimachos and the Booksellers” in K. J. Dover, *Lysias and the Corpus Lysiacum* (Berkeley, 1968), pp. 23–7. Cicero’s own knowledge of Greek oratory in books is amply documented by the *Orator*.
- 20 In a lost letter to Brutus, quoted by Quintilian, *Inst.* 8.3.6.
- 21 L. H. G. Greenwood, ed. and trans., *Cicero: The Verrine Orations*, vol. 1 (Cambridge, Mass., 1928), p. xix.
- 22 Fergus Millar, *The Crowd in Rome in the Late Republic* (Ann Arbor, 1998), p. 14.
- 23 For Millar’s general anxiety about published speeches and oral originals, see *ibid.*, pp. 9–10 (“[w]e have no option but to use as surrogates for the real orations, of which we have no record, the written versions . . .”).
- 24 J. N. Madvig, *De Q. Asconii Pediani et aliorum interpretum in Ciceronis orationes commentariis* (Copenhagen, 1828); P. Schmiedeberg, *De Asconii codicibus et de Ciceronis scholiis Sangallensibus* (Breslau, 1905). There seems to be nothing else on Pseudo-Asconius, though for the genuine Asconius, see Bruce A. Marshall, *A Historical Commentary on Asconius* (Columbia, 1985).
- 25 That is, twice defended by Hortensius; once in his rebuttal to Cicero’s *actio prima*, again in Hortensius’ speech for *actio secunda*, which would have come before Cicero’s.
- 26 Stangl, p. 224.
- 27 This begins another note of explanation that must come from a different scholiast. It advances the interesting theory that Cicero had to publish the Verrines because they were to be his only speeches in the capacity of prosecutor. Of course, Cicero could not have known that he never would prosecute again (though it is possible that he already had resolved as much), but he does specifically point out to the jury that in his prior career he had only defended.
- 28 *Verr. II* 1.2.
- 29 *Verr. I* 54.
- 30 Stangl, p. 222.
- 31 *Verr. II* 5.163. Cicero also suggests that Hortensius expects to sway the crowd to the side of the defense with theatrical gestures made to the *populus* and *corona*, the outer ring of spectators (*Verr. II* 3.49).
- 32 *Verr. II* 3.80.
- 33 *Verr. II* 1.138.
- 34 The latter need not have been able to *read* Latin, as the speeches could have been read to them.
- 35 *Verr. I* 7. Cf. *Div. Caec.* 27, *non modo in animis iudicum sed etiam in oculis conspectuque omnium.*”
- 36 *Verr. I* 48.
- 37 Quint. *Inst.* 9.2.40; 7.3.64.
- 38 *Verr. I* 46.
- 39 *Verr. I* 47.

- 40 Thomas N. Mitchell, *Cicero: The Ascending Years* (New Haven, 1979), pp. 107–49. On the passage of the law and publication of the speeches, see pp. 137–8. Mitchell also takes great pains to dissociate the controversy from Pompey. See also P. A. Brunt in reference to the publication of the speeches: “Patronage and Politics in the ‘Verrines,’” *Chirion* 10 (1980), pp. 286–9.
- 41 *Verr. II* 5.177–8.
- 42 Mitchell, op. cit., p. 147.
- 43 *Verr. I* 54.
- 44 *Verr. I* 29–30.
- 45 *Verr. II* 1.89.
- 46 For example, *si publicani, hoc est si equites Romani iudicarent* (*Verr. II* 3.168).
- 47 E. Badian, *Publicans and Sinners: Private Enterprise in the Service of the Roman Republic* (Oxford, 1972), esp. p. 83. The latest word on Cicero and the *equites* is Jochen Bleicken, *Cicero und die Ritter* (Göttingen, 1995), with references to the important earlier bibliography; Cicero’s relationship with the *publicani* is the subject of pp. 14–26.
- 48 Cicero never says this explicitly, but Claudius’ legal profession and his presence in Verres’ retinue make his equestrian status fairly certain.
- 49 *Verr. II* 2.107. The fact that Claudius’ name is followed by his filiation (C.f.) would suggest that he was not himself a *libertus* but more likely the son of one; alternatively, Cicero may read the entry precisely to suggest that the filiation was inappropriate. We may in either case imagine him laying ironic emphasis on *Gai filius*.
- 50 *RE* 14.283 *Maevius* 2. Number 11 in the list in Ernst Badian, “The *Scribae* of the Roman Republic,” *Klio* 71 (1989): pp. 582–603. His name is given at *Verr. II* 3.175 (not 171, as Badian).
- 51 *Verr. II* 3.176, 185. The scandal derives from the circumstances, not the gift: Cicero admits that such public donations of gold rings by a victorious general to his *scribae* were common.
- 52 *Verr. II* 1.157.
- 53 *Verr. II* 3.182ff. On contempt for *scribae* by *nobiles*, cf. the story of Cn. Flavius in Gell. NA 7.9.
- 54 Badian, “The *Scribae*,” p. 603. On rank, cf. *Verr. II* 2.27.
- 55 Nicholas Purcell, “The *Apparitores*: A Study in Social Mobility,” *Papers of the British School at Rome* 51 (1983), p. 136.
- 56 Further evidence for social climbing by *scribae* is had at *Verr. II* 3.168.
- 57 *Verr. II* 5.35.
- 58 *habitavi in oculis* (*Planc.* 66).
- 59 Sandra R. Joshel, *Work, Identity, and Legal Status at Rome: A Study of the Occupational Inscriptions* (Norman, Ok., 1992), p. 173.
- 60 Stangl, p. 223.
- 61 On the negative connotations of *elegans*, see Gell. NA 11.2.1. But cf. Brian A. Krostenko, *Cicero, Catullus, and the Language of Social Performance* (Chicago, 2001), pp. 114–23.
- 62 *Verr. II* 1.47.
- 63 *Verr. II* 4.127. It seems unlikely that Verres could not read Greek, though Cicero repeats the claim at *Verr. II* 5.148. Jorma Kaimio, *The Romans and the Greek Language: Commentationes Humanarum* (Helsinki, 1979), p. 14, says that Cicero’s claim “would be rather surprising in the former *legatus* and *proquaestor* of Dolabella in Cilicia, who had travelled widely in the East, but we have no means of checking Cicero’s information in this respect.” On Romans and Greek, see Kaimio

generally; on Romans and Greek intellectual culture, Elizabeth Rawson, *Intellectual Life in the Late Roman Republic* (London, 1985), pp. 3–18.

64 *Div. Caec.* 39.

65 Pseudo-Asconius, *Arg. Div. Caec.* (Stangl, p. 185).

66 *Div. Caec.* 39.

67 On the political stakes of eloquence, see Alain Michel, *Rhétorique et philosophie chez Cicéron: Essai sur les fondements philosophiques de l'art de persuader* (Paris, 1960), esp. pp. 596–632.

68 In the eyes of many contemptuous *nobiles*, such a war was unwinnable: for Cicero's ongoing problems as a *homo novus*, see T. P. Wiseman, *New Men in the Roman Senate, 139 BC–AD 14* (Oxford, 1971), pp. 101–10 *et passim*.

69 Donovan J. Ochs, "Rhetorical Detailing in Cicero's Verrine Orations," *Central Studies Speech Journal* 33 (Spring 1982): pp. 313–18. Cf. Manfred Fuhrmann, "Tecniche narrative nella seconda orazione contro Verre," *Ciceroniana* 4 (1980): pp. 27–42.

6 DECEMBER 3, 63 BCE

1 The following account of the night's events is based on Cic. *Cat.* 3.4–7; Sall. *Cat.* 44–6; Plut. *Cic.* 18.

2 Cic. *Cat.* 3.6.

3 *OCD imperium*.

4 *Senatum frequentem celeriter, ut vidistis, coegi* (Cic. *Cat.* 3.7); cf. Sall. *Cat.* 46. In theory the senate comprised 600 members, but the actual number fluctuated below that. On fines for absenteeism, cf. Cicero's comments about his own conspicuous absence during Antony's harangue in 44 (*Phil.* 1.12). We learn from Cicero that 415 senators cast votes at an important (and presumably crowded) meeting in 61 (*Att.* 14 = 1.14.5). That 400 or so senators in attendance represented a notably full meeting can be deduced from the passage just cited and from *Red. sen.* 26. Even in the surviving *cella* of the temple of Concord, the dimensions of which (43 × 23 m.) represent a Tiberian enlargement (*LTUR* vol. 1, p. 318), 400 senators would have sat shoulder to shoulder.

5 It often has been supposed that the published Catilinarians differ substantially from the speeches that were delivered, in part because a letter from Cicero to Atticus in June, 60 (*Att.* 21 = 2.1.3) has been taken to indicate that these and the other speeches of Cicero's consulate were not published until that year. They thus would have been revised in order to strengthen Cicero's defensive position against the political storm that soon would lead to his exile. Matters were set straight by William C. McDermott, "Cicero's Publication of His Consular Orations," *Philologus* 116 (1972), pp. 277–84, who points out that Cicero's letter refers to the collection of the speeches into a single corpus and by no means suggests that they had not been published before, that nothing in the textual tradition of, or in later references to, these speeches indicates that the proposed corpus ever was realized, and, most importantly, that Cicero's usual practice was to publish soon after delivery and that we scarcely can suppose a hiatus of several years for the speeches recording his greatest triumph. McDermott (p. 284) concludes that the Catilinarians were published "serially or as a group, probably in December." (See McDermott for more detail, as well as a review of earlier bibliography.) In addition to McDermott's arguments, it should also be remembered that virulent attacks on Cicero for the executions began almost immediately (for the demonstration against Cicero on December 29, see *Fam.* 2 = 5.2.7); there is, therefore, no need to find in his often careful and sometimes defensive language evidence of later pressure by

- Clodius. Indeed, it might be more to the point to observe that, in his too-meticulous efforts to support the process leading to the executions with law and precedent, Cicero inadvertently scripted the arguments of his own opposition.
- 6 Cicero had summoned a fifth man, M. Caeparius, who already had left Rome, though he was later apprehended. On this and other questions regarding the men Cicero and the senate chose first to arrest and finally to condemn, see Duane A. March, "Cicero and the 'Gang of Five,'" *CW* 82 (1989), pp. 225–34.
 - 7 *Cic. Cat.* 3.8–9.
 - 8 *Cic. Cat.* 3.7.
 - 9 Lentulus had been consul in 71. Expelled from the senate in 70, he obtained readmission by winning a praetorship for 63. See T. R. S. Broughton, *The Magistrates of the Roman Republic* (New York, 1952), vol. 2, pp. 121, 166.
 - 10 *Cic. Cat.* 3.10.
 - 11 *toto iam indicio exposito atque edito*. By these words, Cicero may mean to suggest that Lentulus' tablets had been shown to the senators, just as written evidence would be shown to a jury. Given the size of the senate, this surely would have been impractical, but perhaps a few senators were allowed to inspect the recited documents.
 - 12 *Cic. Cat.* 3.10–11.
 - 13 *Cic. Cat.* 3.12.
 - 14 *Cic. Cat.* 3.13.
 - 15 The discoveries at Vindolanda have reminded us that other kinds of "tablets" could be used for letters; wax tablets, however, were the rule. See Alan K. Bowman and J. David Thomas, *Vindolanda: The Latin Writing Tablets* (London, 1983), vol. 1, p. 33.
 - 16 See the diagram *ibid.*, p. 45. For more on the handling of tablets by the Romans and others (with numerous illustrations), see Elisabeth Lalou, *Les Tablettes à écrire de l'antiquité à l'époque moderne*, *Bibliogica* 12 (Brepols, 1992).
 - 17 Nicholas Horsfall, "Rome without Spectacles," *Greece and Rome* 42 (1995), pp. 49–56.
 - 18 Myles McDonnell, "Writing, Copying, and Autograph Manuscripts in Ancient Rome," *CQ* 46 (1996), p. 475.
 - 19 Sallust (*Cat.* 44.1) refers to each letter as a *ius iurandum signatum*; Cicero (*Cat.* 3.9) speaks of a letter as well as a *ius iurandum* (delivered orally?).
 - 20 *Cic. Cat.* 3.12. Translated above.
 - 21 *Sall. Cat.* 44.5.
 - 22 Ronald Syme, *Sallust* (Berkeley, 1964), p. 72; P. McGushin, *Bellum Catilinae: A Commentary*, *Mnemosyne Suppl.* 45 (Leiden, 1977), pp. 220–1; both include references to earlier discussions. Of course, the opposite is also possible: Cicero could derisively "remember" the letter as more awkward than it was. In any case, Cicero appears to be quoting from memory rather than reading (although compare the way he calls attention to the fact that he is quoting from memory in the case of the yet unwritten *senatus consultum* at 3.13), whereas Sallust could have derived his version from transcripts of the senate's meeting, about which I will have more to say below. One possibility which seems not to have been advanced is that the original letter was in Greek, which would explain the divergent quotations as two translators choosing different strategies for rendering Greek constructions (especially the imperative, object of the greatest divergences). Writing in Greek might have been seen as offering some (though presumably limited) protection in the event of interception. Code was an option for correspondents who made arrangements in advance (including Cicero, Caesar, and Brutus: Gell. *NA* 17.9; Isid. *Etym.* 1.25; Suet. *Iul.* 56; cf. Suet. *Aug.* 88), but Lentulus seems to have only just joined the conspiracy (see next note).

- 23 McGushin, *op. cit.*, p. 221, argues that Lentulus did not join the conspiracy until after Catiline's departure from Rome.
- 24 Because, of course, it conjured the specter of a slave war, a reliable source of terror to the Roman people. Catiline himself, keenly aware of this fear and the effect it could have on his image in Rome, sought to avoid reliance on slaves (Sall. *Cat.* 56.5).
- 25 Cic. *Sull.* 41–2.
- 26 That innovation belongs to Julius Caesar (Suet. *Iul.* 20), present and attentive at the meeting on December 3 and outspoken at the meeting two days later, when the same senatorial secretaries (see below) recorded his speech in favor of sparing the conspirators' lives.
- 27 The view of *commentarii* as *tabulae publicae* comes from Cicero's discussion of the transcript of the senate's meeting on December 3 at *Sull.* 42 (quoted below), but he may be exaggerating the former's usual status. Note that in D. H. Berry, ed., *Cicero: Pro P. Sulla Oratio* (Cambridge, 1996), the *comparanda ad loc.* (p. 220) are an error and have nothing to do with the passage or note.
- 28 Plut. *Cat. Min.* 23.3. I cannot agree with McDonnell, *op. cit.*, p. 474, n. 23, who argues, following others, that the ancient sources clearly indicate a change both in method and in personnel between the two senatorial meetings. Cicero's use of *perscribere* (*Sull.* 42) about December 3 is meaningless: we scarcely can suppose that the compounds of *scribere* configured their meanings around the use of shorthand so soon after the technique's apparent debut; Cicero means simply that every word was recorded (i.e., the senators did not summarize or excerpt), and this presumably would be possible only with the use of shorthand. Richard J. A. Talbert, *The Senate of Imperial Rome* (Princeton, 1984), p. 316, takes Plutarch's dating of the innovation to December 5 to exclude the possibility that shorthand was used two days earlier, but such an interpretation is too literal: Plutarch mentions the innovation in connection to December 5 because the speeches of that day eclipse the testimony of two days earlier in his narrative (as in Sallust's); his purpose in any case is to account for the unique survival of one of Cato's speeches, and his explanation is not really less accurate if the stenographers had begun working two days before. Nor can we use imperial evidence of the use of slaves and others of low status as senatorial secretaries to posit the same for the Republic at what is explicitly a moment of innovation. Note also that Pierre Willems, *Le Sénat de la république romaine* (Louvain, 1883–5), vol. 2, p. 206, seems to have misread *Att.* 380 = 15.3.1 (apparently taking the verb *scribas* as the accusative of *scriba*), which in fact says nothing about scribes. For both meetings, Cicero required a record that was both accurate and authoritative. On December 3, this led him to use senators who could write quickly; the requirements on December 5 were no different.
- 29 *Romae primus Tullius Tiro Ciceronis libertus commentatus est notas, sed tantum praepositionum* (Isid. *Etym.* 1.22.1). *Commentatus est* here means "composed a *commentarius*," and Isidore probably knew at least one of the collections of *notae* that circulated in the Middle Ages as *commentarii notarum tironiarum*. The use of the term *notae tironianae* provides some evidence for Tiro's primary role, though if the surviving lists still contain any genuinely "Tironian" notes, these have all but vanished amid later accretions.
- 30 Suet. *Iul.* 20.
- 31 Cic. *Leg. agr.* 2.9.
- 32 Cic. *Sull.* 42–3.
- 33 For more defense of Cicero, see Berry, *op. cit.*, p. 216, *contra* E. Gabba, "Cicero e la falsificazione dei senatoconsulti," *Studi classici e orientali* 10 (1961), pp. 89–96. Note that Berry's view that each of the four secretaries transcribed everything and that

their accounts were then amalgamated (Gabba's *collazione* is non-committal) is not necessarily the case: our only description of the use of multiple scribes in such circumstances, Isid. *Etym.* 1.22.1, suggests that the ordinary practice was to divide the task among them. This would suggest that the reference in the following passage to Cicero's scribes setting down the record in a *codex* indicates the compilation of the separate parts of the transcript kept by each, either by recopying from their tablets (the most natural meaning for *referre*) or, perhaps, by physically collating the tablets themselves into a single bundle.

34 Cic. *Sull.* 43.

35 Cic. *Sull.* 44. On the method of compilation, see above. Note that the passage presents textual difficulties (to my mind still unresolved). Cicero complicates matters by claiming that Torquatus enjoyed this right as his own friend, leaving us unsure whether *any* senator could have asked to review the transcript of the evidence he had just heard. Cicero goes on to ask Torquatus why he remained quiet "after the evidence had been read, transcribed, and made public" (*indicio lecto descripto divulgato*), but the "reading" alluded to here presumably is that which Torquatus could have undertaken (but chose not to – Cicero is being deliberately misleading), rather than any public rehearsal of the transcript for senatorial approval.

36 Cicero devotes special attention to the confession of Lentulus, who, after repeated denials, "then, driven suddenly mad by his crime, demonstrated how strong conscience can be, for although denial was possible, he defied everyone's expectation by suddenly confessing" (*Cat.* 3.11). But if Lentulus had offered a full admission of guilt, his subsequent nervousness when his letter to Catiline was brought forth would be inexplicable. It seems likely that Lentulus confessed only to repeating the Sibylline prophecy which seemed to promise him absolute power in Rome – and it is more than possible that he was driven to this confession less by unbearable conscience than by reckless arrogance, fueled by contempt for this upstart consul.

37 Cic. *Cat.* 3.8.

38 The letters are quoted above. Cicero's *auxilia adiungas* suggests troops, but Sallust's *auxilium petas* is more vague.

39 Surviving manuscripts of Latin texts reflect widespread confusion between *describere* and *discribere*; editors and lexicographers often prefer the latter for the meaning "distribute into parts." The manuscripts of *Cat.* have *descriptum* here; even if Cicero ordinarily preferred *discribere* for this meaning (far from certain), best to follow the manuscripts here (as does A. C. Clark in his *OCT*), given the likelihood of a secondary meaning more closely associated with *describere*. Already in November, Cicero had used the same word to describe the plans to burn the city (*Cat.* 1.9, where Clark this time prints *discripsisti*; Halm, *descripsisti*).

40 On the nature of the attacks, see Thomas N. Mitchell, *Cicero: The Senior Statesman* (New Haven, 1991), pp. 65–7.

41 Cic. *Cat.* 3.19–20; *Div.* 1.19–20; Julius Obsequens, *Prodigiorum Liber*, 60. On the *aera legum* of the Capitol, see Callie Williamson, "Monuments of Bronze: Roman Legal Documents on Bronze Tablets," *CA* 6 (1987), pp. 160–83.

42 Quoted in Cic. *Div.* 1.20.

43 Cic. *Cat.* 3.3; 1.10. Cicero's aristocratic detractors would later use *comperi omnia* to mock him for his cleverness (in that sense of "clever" one encounters more in Britain than in America): *Att.* 14 = 1.14.5; *Fam.* 5.5.2.

44 James J. Ferry, "The Art of Cicero," *CJ* 63 (1968), pp. 201–4. This brief article offers a number of subtle insights into Cicero's language in the third oration.

45 In the *De Cons.* (*Div.* 1.19), Cicero uses *signa* for the portent observed immediately prior to the outbreak of the conspiracy, though not for those observed in 65.

- 46 A sense of the rich topographical narratives there on display can best be had simply by leafing through Nicholas Purcell's evocative entry on the Republican Forum in *LTUR* vol. 2, pp. 325–36.
- 47 Available in English as *Theories of the Sign in Classical Antiquity*, trans. Christine Richardson (Bloomington, 1993).
- 48 See his chapter 9 (pp. 201–25 in the Italian version), which informs the following discussion.
- 49 Cic. *Inv. rhet.* 1.48.
- 50 *Auct. Her.* 2.8.
- 51 Cic. *Cat.* 3.13.
- 52 *Part. or.* 114. The final phrase is *ut scriptum aut obsignatum aut depositum quippiam*, where I have taken *obsignatum* and *depositum* as modifying *scriptum quippiam*.

7 THE HAND OF A SECRETARY

- 1 App. *B Civ.* 2.125, 3.5; Plut. *Ant.* 15.2; Vell. Pat. 2.60.4.
- 2 Among ancient authors, Plutarch describes the transfer of these “papers” in the greatest detail: ἔλαβε δὲ καὶ τὰ βιβλία τοῦ Καίσαρος, ἐν οἷς ὑπομνήματα τῶν κεκριμένων καὶ δεδογμένων ἦν ἀναγεγραμμένα . . . , “He (Antony) also took possession of Caesar’s books, in which records had been set down of his decisions and decrees . . .” (*Ant.* 15.2). *Βιβλία* are papyrus rolls, and *ὑπομνήματα* probably translates the Latin *commentarii*, the term regularly used by Cicero in what follows.
- 3 A *commentarius* could be any notebook and often refers to that of a student. But the word frequently acquired specialized significance in specific contexts; see *RE* 4.726–59; also Franz Bömer, “Der *Commentarius*. Zur Vorgeschichte und literarischen Form der Schriften Caesars,” *Hermes* 81 (1953), pp. 210–50.
- 4 *RE* 4.733–44.
- 5 *Phil.* 1.1, 31; 2.89; *Att.* 425=16.14.1; App. *B Civ.* 2.126; Dio Cass. 44.22.3; 46.28.3.
- 6 App. *B Civ.* 2.126. Antony’s house had belonged to Pompey, adding to the suggestive connections described below. Apart from the proximity of Antony’s house, the topographical context of the meeting seems to have received no attention from scholars.
- 7 Plut. *Cic.* 8.3; *Q. Fr.* 7 = 2.3.7.
- 8 *Q. Fr.* 21 = 3.1.14; *Har. resp.* 31.
- 9 *Phil.* 2.28. Cf. Dio Cass. 44.20.4.
- 10 Some of the senators presumably sat on the *subsellia* mentioned by Varro, *Rust.* 1.2.2; he mentions the map at 1.2.1 (*in pariete pictam Italiam*).
- 11 App. *B Civ.* 2.120.
- 12 App. *B Civ.* 2.128.
- 13 I differ here from the standard reference works (e.g., *TLL* 1.1408.13ff.), which attach the *acta Caesaris* to a broader category of *acta magistratuum et principum*, for which most evidence is later. Early on, *agere* and its derivatives did acquire legal and political significance in particular contexts (such as that of the *legis actio*, seen in Chapter 1, or that of urging a popular assembly to adopt a measure, for which was used the phrase *agere cum populo*), and it may be assumed that the senators did not choose *acta* entirely out of the blue. But, given the generic meaning of *agere* itself, scattered appearances of *acta* to refer to the doings of republican magistrates before Caesar (mostly in imperial sources anyway) are scarcely sufficient to suggest the existence of a clear-cut category. On the contrary, the crisis over Caesar’s *acta* demonstrates rather emphatically that the

- participle had no stable technical significance at the end of the Republic. The whole subject deserves a thoroughgoing treatment which is only sketched here.
- 14 Probably our best definition of *acta* here comes from Cicero's apparent quotation (*Att.* 407C.2 = 16.16.11) of the law that ratified the senate's decree as giving the consuls authority to review those things (*res*) which Caesar *statuisset, decrevisset, egisset*. Probably it was as the most general term that the third lent its participle as a substantive encompassing all three activities. Cf. *Phil.* 2.100, "*acta enim Caesaris pacis causa confirmata sunt a senatu: quae quidem Caesar egisset, non ea quae egisse Caesarem dixisset Antonius.*"
- 15 See Chapter 1.
- 16 Constitutionally, of course, the senate's decree needed approval by a comitial assembly, which came on June 2, as we learn from *Att.* 407C.2 = 16.16C.11; note that this flatly contradicts the odd suggestion of Shackleton Bailey, vol. 6, p. 221, regarding *Att.* 364 = 14.10.1, that passage came in late March or early April. The resulting *lex Antonia* usually is referred to as the *Lex Antonia de actis Caesaris confirmandis*. For reasons not clear, the senate's decree (and the law?) had stipulated that a review of Caesar's *acta* was not to begin until June 1; despite Cicero's later complaints in *Phil.* 2.100, Antony seems to have waited until June 1 (or maybe June 2, after passage of the *lex*) to begin any public review (*Att.* 407C.2 = 16.16.11; 407F.2 = 16.16.18), though it is abundantly clear from Cicero's letters that maneuvers regarding the *acta* began much sooner.
- 17 John H. D'Arms, *Romans on the Bay of Naples: A Social and Cultural Study of the Villas and Their Owners from 150 BC to AD 400* (Cambridge, Mass., 1970), pp. 48–9.
- 18 *Att.* 355 = 14.1.2.
- 19 *Att.* 356 = 14.2.1.
- 20 *Att.* 358 = 14.4.2.
- 21 *Att.* 361 = 14.7.2.
- 22 *Att.* 362 = 14.8.2.
- 23 *Att.* 364 = 14.10.4.
- 24 *Att.* 365 = 14.11.1.
- 25 *Att.* 378 = 15.1a.2.
- 26 *Att.* 374 = 14.20.3.
- 27 *Att.* 380 = 15.3.2; cf. 374 = 14.20.3.
- 28 *Att.* 360 = 14.6.2; 363 = 14.9.2. It is difficult to know whether *facta* here should be read as a loose synonym for *acta*, whether its broader meaning reflects Antony's broadening of the ratification's purview, or whether Cicero uses it in preference to *acta* because the absolute absence of any legal resonance in *facta* corresponds better to the lawlessness implicit in *tyrannus*. At some level, however, the term probably reflects the collapsing confidence in the meaningfulness of *acta* which is explicit in the following quote.
- 29 *Att.* 364 = 14.10.1.
- 30 *Ibid.*
- 31 *Att.* 366 = 14.12.1.
- 32 The Buthrotian affair pervades the summer's correspondence; on arguments relating to the ratification of the *acta*, see especially *Att.* 366 = 14.12.1 and the bundle of copies sent to Atticus, *Att.* 407AF = 16.16.3–18.
- 33 The first mention of the collaboration of Faberius occurs in *Att.* 373 = 14.18.1.
- 34 *Att.* 367 = 14.13.6.
- 35 *Att.* 367A = 14.13A.2.
- 36 *Att.* 368 = 14.14.2. More references to Antony and the *acta* at *Att.* 369 = 14.15.2 (though *acta* here could have a generic sense); 371 = 14.17.6; 375 = 14.21.2.

- 37 *Att.* 407A.4 = 16.16.6; 407C.2 = 16.16.11; 407D.1 = 16.16.14; 407F.2 = 16.16.18.
- 38 *Att.* 407C.2 = 16.16C.11. The *libelli* might simply be Caesar's *commentarii*.
- 39 Atticus seems to have appeared before the board roughly two weeks after it was first convened and to have come away unsatisfied (*Att.* 396 = 15.19.1), though a favorable outcome was achieved by the end of June (*Att.* 402 = 15.14).
- 40 *Att.* 358 = 14.4.2.
- 41 *Att.* 360 = 14.6.1.
- 42 *Att.* 367 = 14.13.3.
- 43 *Att.* 368 = 14.14.3.
- 44 *Att.* 376 = 14.22.2.
- 45 *Att.* 381 = 15.4.2–3.
- 46 *Att.* 415 = 16.7.1; *Phil.* 1.8. The two accounts are not entirely consistent about what Cicero received when and from whom; presumably the sequence is juggled in the *Phil.* better to suit Cicero's arguments. The letter does not mention Antony's *contio*, though it does refer to an *edictum* of his, a copy of which was sent to Cicero by Brutus.
- 47 *Att.* 415 = 16.7. Cicero's *itane, mi Attice?* may be the most devastating line in the whole correspondence.
- 48 *Att.* 389 = 15.11.2.
- 49 That is, the signs (indicated by *proscribere*) used the new name that had been given to the month of Quintilis in honor of Julius Caesar. Cicero seems amused by the mortification the slip caused Brutus, who immediately wrote to his agents in Rome to ensure that Quintilis would be used on future announcements (*Att.* 409 = 16.1.1; 411 = 16.4.1).
- 50 Plut. *Brut.* 9.5–7; 10.6.
- 51 Nic. Dam. 19; App. 2.116; Dio Cass. 44.18; Suet. *Iul.* 81; Plut. *Caes.* 65; Vell. Pat. 2.57.2; Flor. 4.2.94.
- 52 Concealment of the daggers is described by Dio Cass. 44.16.1; he seems to refer to boxes for tablets rather than to the pen-cases usually imagined. Suet. *Iul.* 82 reports that Caesar caught hold of the arm of Cassius and stabbed it with his *graphium*. Cf. Nicholas Horsfall, "Methods of Writing, Memorisation, and Research," *JRA* 11 (1998), p. 566.
- 53 Arthur Stanley Pease, ed., *M. Tulli Ciceronis De divinatione liber primus*, *University of Illinois Studies in Language and Literature* 6.2 (May 1920), pp. 13–15.
- 54 *Div.* 2.1.
- 55 *Div.* 2.7.
- 56 *Brut.* 8ff.
- 57 *Div.* 2.4.
- 58 Namely, *Brutus, Orator, Paradoxa Stoicorum, De finibus, Tusculanae disputationes, De natura deorum*.
- 59 *Phil.* 2.28.
- 60 The work survives, though in mutilated form. Cicero announces his plan to write a treatise with this title at *Div.* 2.3. For bibliography on the dates of this and the other treatises mentioned in this paragraph, see Marinone, pp. 235–7.
- 61 "*De Gloria*" *misi tibi. custodies igitur, ut soles, sed notentur eclogae duae quas Salvius bonos auditores nactus in convivio dumtaxat legat* (*Att.* 412 = 16.2.6). The meaning of *notentur* is obscure; Cicero clearly already has made the two selections (else the plural *mibi valde placent* that follows makes no sense), so the notation in question presumably is not the mere indication of which passages to read but the marking of the passages to indicate pauses and so on for professional oral delivery. *Custodies igitur, ut soles* may be a wry reference to Atticus' failure to protect

- the draft of Cicero's *De finibus* from unauthorized copying a year before (*Att.* 327 = 13.21a).
- 62 *Att.* 413 = 16.3.1. *Macrocollum* also appears at 334 = 13.25.3 (and one other time in Latin, at Plin. *HN* 13.80). See Shackleton Bailey, vol. 5, pp. 380, 414.
- 63 *Att.* 414 = 16.6.4.
- 64 *Top.* 1–5.
- 65 *Att.* 381 = 15.4.3; 406 = 15.27.2; 412 = 16.2.6; 416 = 15.13.3. What is apparently an analogous piece by Varro is mentioned at 420 = 16.11.3; 421 = 16.12.1.
- 66 *Phil.* 1.1.
- 67 On the name, see *Ad Brut.* 2.3.4.
- 68 *Phil.* 1.16; 1.19. *Se uno auctore* in the first passage is unquestionably a joke on Antony's alleged "authorship" of texts passed off as Caesar's, repeated in still more pointed form at 1.24, *uno verum optimo auctore*. Probably Cicero is hinting at the charge already in 1.2, *nihil tum nis quod erat notum omnibus in commentariis reperiebatur*, though this could refer equally well to Antony's use of records that were genuinely Caesar's but which did not rise to the level of *acta*.
- 69 *Phil.* 1.38.
- 70 Cassius had read a copy of the First Philippic and wrote Cicero a letter expressing approval by late September (*Fam.* 344 = 12.2).
- 71 *Att.* 416 = 15.13.1–2.
- 72 Matters are complicated further by the fact that *edendam* is only a conjecture (though a plausible one) for an evident corruption.
- 73 *Att.* 417 = 15.13a.3.
- 74 *Att.* 420 = 16.11.1.
- 75 James N. Settle, *The Publication of Cicero's Orations* (Ph.D. diss., University of North Carolina at Chapel Hill, 1962), provides a full review of the evidence regarding composition and distribution (pp. 274–80) and concludes that the speech "was published before the end of 44 BC, sometime after Antony left Rome on the night of November 28–29" (p. 279).
- 76 On the dates and circumstances of its composition, see Andrew R. Dyck, *A Commentary on Cicero, De Officiis* (Ann Arbor, 1996), pp. 8–10.
- 77 Thaddäus Zielinski, *Cicero im Wandel der Jahrhunderte*, 4th edn (Leipzig, 1929), p. 66. Dyck, op. cit., pp. 39–49, surveys the treatise's influence.
- 78 Cecil W. Wooten, *Cicero's Philippics and their Demosthenic Model: The Rhetoric of Crisis* (Chapel Hill, 1983). This is a good place to call the reader's attention again to Richard Leo Enos, *The Literate Mode of Cicero's Legal Rhetoric* (Carbondale, 1988). Though Enos does not examine the Philippics, his general review of the place of Ciceronian oratory within (and not merely alongside) literary practice is excellent.
- 79 *Off.* 2.3.
- 80 I had the very good fortune to read both works, along with the First Philippic, the *De amicitia* (on its date, see below), and Cicero's letters from the fall of 44, with a group of graduate (and one post-Baccalaureate) students at the University of Pennsylvania, on or around the anniversaries of the composition of each text, over the course of the fall of 2000. The insights into Cicero's working process that this experiment produced were priceless, and I deeply thank all participants.
- 81 Instances are too numerous to list here; see Dyck, op. cit., p. 9, n. 24.
- 82 *Phil.* 2.97. Here and elsewhere, Cicero refers to *chirographa*, texts written entirely in the "hand" of their author, often (though mostly in later authors) used of promissory notes (cf. *syngrapha* a few sentences before, at 2.95). The term may thus be intended to echo the buying and selling of *acta*. But, more likely, Cicero uses

the term as an ironic allusion to Antony's alleged efforts, with the help of Caesar's secretary, to fake Caesar's "handwriting."

83 *Phil.* 2.100.

84 Note, however, that Cicero's language is sufficiently vague to allow (but not encourage) one to understand his claim to be not that no review had occurred, but that the review was insincere and/or did not correspond to the senate's instructions.

85 *Att.* 367B = 14.13B.1.

86 Shackleton Bailey, vol. 6, p. 228.

87 *Phil.* 2.7.

88 *Phil.* 2.8.

89 Myles McDonnell, "Writing, Copying, and Autograph Manuscripts in Ancient Rome," *CQ* 46 (1996), p. 475.

90 No doubt prompted by Antony's insult, Cicero defends the line at *Off.* 1.77; on the whole controversy, see Dyck, op. cit., pp. 208–9.

91 *Phil.* 2.20.

92 *Phil.* 2.105.

93 *Phil.* 2.116.

94 Tacitus' famous quip about the poetry of Cicero, Caesar, and Brutus (the last two were luckier writers of poetry "because fewer know that they did so") is at *Dial.* 21.6. *Testimonia* for Cicero's *Poema ad Caesarem* are collected by Antonio Traglia, *M. Tulli Ciceronis Poetica Fragmenta* (Milano, 1963), pp. 52–4 (fragg. 18–22). Note also that Caesar, like Cicero and Brutus, published his orations (Gell. *NA* 4.16.8), including the (probably not delivered) *Anticato*, a response to Cicero's (lost) work in praise of Cato Uticensis. For fuller lists of the literary works attested for Brutus and Caesar, see their entries in the *OCD* and *RE*; for Caesar, see now Luciano Canfora, *Giulio Cesare: il dittatore democratico* (Roma, 1999), pp. 389–99.

95 *Phil.* 2.34.

96 *Phil.* 2.36, 76, 84.

97 *Phil.* 2.44–5. On this passage, see Anthony Corbeill, *Controlling Laughter: Political Humor in the Late Roman Republic* (Princeton, 1996), p. 144.

98 *Phil.* 2.63.

99 "This chapter," cap. 25 in the old numbering system; sections 61–3 in the new, "is more often cited by Quintil. than any other in the speech" – Mayor's own (bracketed) addition to Karl Halm, *Cicero's Second Philippic, with an Introduction and Notes*, trans. John E. B. Mayor, 3rd edn (London, 1867), p. 106. Quintilian's careful dissection of the lines I have cited is at 8.4.8–9, where he aptly concludes, *ad summum non pervenit nisu sed impetu*; he gives precise advice on how to deliver the text at 11.3.39.

100 *Phil.* 2.33.

101 *Phil.* 2.54.

102 Other direct references to *memoria* at *Phil.* 2.32, 51. Memory is a conspicuous theme also in the proem to the *De amicitia*, written in 44 but variously assigned to more specific dates by modern scholars, though most suggest composition in the fall, before completion of the *De officiis*, which mentions the *De amicitia* at 2.31 (Marinone, p. 235). Like *memoria*, *amicitia* is a recurring subject in the Second Philippic, especially in the first third of the speech (*amicus*, *inimicus*, *amicitia*, etc.: *Phil.* 2.2, 3, 6, 7, 23, 27, 34, 38, 39); this largely is the result of Antony's reading of Cicero's letter in order to support his allegation of breached *amicitia*. Friendship is also a major theme of the *De officiis* (see Dyck, op. cit., p. 664, s.v. *Friendship*). It is therefore very tempting to suppose that

the *De amicitia* was part of the same philosophical–oratorical nexus that produced the *De officiis* and the Second Philippic, and that it was written after Antony’s speech on September 19, as an aid to or an effect of Cicero’s efforts to theorize his response.

- 103 Already in 54, Cicero could boast (in a letter to Quintus) that every schoolboy would learn by heart his recently published speech against Calventius Marius, whereas no one would bother to read his opponent’s reply (*Q Fr.* 3.1.11). Evidence for the role of Cicero generally and the Verrines specifically in subsequent Roman pedagogy abounds in Quintilian, *Inst.* (though his own favorite speech for teaching was the *Pro Milone*), and continues through to the Late Antique grammarians. This is confirmed by the Ciceronian papyri, many from pedagogical contexts (including bilingual ones, suggesting that Cicero’s speeches were used not only for rhetorical training but also for language instruction); they are collected by Robert Cavenaile, *Corpus papyrorum Latinarum* (Wiesbaden, 1958), pp. 70–96; reproductions in Richard Seider, “Beiträge zur Geschichte und Paläographie der antiken Cicerohandschriften,” *Bibliothek und Wissenschaft* 13 (1979), pp. 101–49. Naturally, discussion of Cicero in the schools may be found in most works on Roman education.
- 104 Fourteen Philippics survive, but ancient sources mention two or three others: see Marinone, p. 256; cf. John Richard King, ed., *The Philippic Orations of M. Tullius Cicero*, 2nd edn (Oxford, 1878), p. 345.
- 105 By Porcius Latro, in Sen. *Suas.* 6.3.
- 106 Velleius Paterculus, 2.66.
- 107 Plut. *Ant.* 20.3–4. On the conflicting accounts of Cicero’s dismemberment, see my Introduction.
- 108 Plut. *Cic.* 49.2.

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